The American
Political Science Review

VOL. XXXVI OCTOBER, 1942 NO. 5

GOVERNMENTAL CENSORSHIP IN WAR-TIME*

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To a free people, the very word "censorship" always has been distasteful. In its theory, it runs counter to all democratic principles; in practice, it can never be made popular, can never please anyone.

Everything the censor does is contrary to all that we have been taught to believe is right and proper. The Post Office Department, for example, has two proud mottoes: "The mail must go through," and "The privacy of the mail must be protected at all hazards." But censorship stops the mail, it invades the privacy of the mail, it disposes of the mail as may seem best. The same thing holds true in the publishing business. Censorship limits the lively competition and free enterprise of reporters. It relegates many a scoop to the waste basket. It wields a blue pencil—both theoretical and actual—on news stories, magazine articles, advertisements, and photographs. Censorship also enters the radio industry, where it may edit scripts and in some cases stop entire programs.

Yet even the most vociferous critics of the principle of censorship agree that in war-time some form and amount of censorship is a necessity. It then becomes not merely a curtailment of individual liberty, but a matter of national security. It is one of the many restrictions that must be imposed on people fighting for the right to throw off those restrictions when peace returns. Justice Oliver Wendell Holmes once wrote: "When a nation is at war, many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be tolerated so long as men fight."[1]

* Adapted from a lecture delivered at the Catholic University of America, April 13, 1942.

[1] Schenck v. United States, 249 U.S. 47 (1919).

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The censorship process is essential to the conduct of war for two reasons: First, it goes a long way toward keeping the enemy from knowing what we are doing on the home front. It prevents him from learning movements of our troops and ships, and how rapidly planes, tanks, and guns are coming down the production line. If it does not always withhold this information completely, it slows it up until the value is decreased or lost. Second, on its offensive side, censorship helps us learn what the enemy is doing. Examination of mail and cablegrams often turns up vital information, not only about the enemy's battle or production plans, but about his reserves and his morale. This material is the pay-off of the whole censorship system.

The American people have endured censorship, in one form or another, in all of their wars. In the American Revolution itself, minority sentiment in a community invariably was suppressed. Andrew Jackson became a censor in the War of 1812. After his victory at New Orleans, he became enraged by a story in the *Louisiana Gazette* that he had received a certain official message. He insisted that editorial permission to print such news must come from him. Finally he imprisoned a writer who protested against the censorship, and forced from the city a judge who issued a writ of *habeas corpus* in behalf of the imprisoned writer.

Other cities also witnessed attacks on freedom of expression. In Baltimore, a mob wrecked the office of the *Federal American*, a newspaper which called the war unnecessary. After a month, the paper resumed publication, but one of its principals was killed by another mob.

The Civil War produced many similar incidents. Mobs forced several Northern papers to suspend because of their stand against the war, while others had to display the American flag in their windows. The War Department set up a censorship over telegraph lines, and in August, 1861, the Postmaster-General denied the mails to certain papers accused of being disloyal to the Union cause. His order stood for more than a year before it was rescinded.

Abraham Lincoln, when urged on one occasion to suppress the *Chicago Times*, protested against such a course and replied to the person advocating it: "I fear you do not fully comprehend the danger of abridging the liberties of the people. A government had better go to the very extreme of toleration than do aught that could be construed into an interference with or jeopardize in any

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degree the rights of the people."[2] General Burnside, however, later suppressed the paper in 1863 because of its "repeated expression of disloyal and incendiary sentiments." Lincoln had yielded in his viewpoint, but he had misgivings about Burnside's action and wrote to Secretary Stanton expressing the opinion that the suspension order should be revoked. A meeting of prominent Chicago citizens asked Lincoln to rescind the order, which also was denounced in a resolution by the state legislature. Heeding these expressions, the President authorized the *Times* to publish again.[3]

In the Spanish-American War, the public was not particularly aware of censorship. American newspapers with war correspondents in Cuba hired small boats to carry dispatches across the water to Florida. Censors were placed over the telegraph wires at Tampa, Miami, and Jacksonville, but they were lenient in handling copy. While American troops were in the Philippines, there were some newspaper criticisms, not of the military censorship itself, but of inequalities in its application.

Involvement in the World War in 1917 brought about the first American attempt at a widespread and thoroughly organized censorship. On April 13, 1917, a week after war was declared, the Secretaries of State, War, and Navy recommended to President Wilson the creation of a Committee on Public Information to exercise a voluntary censorship over the American press and give out governmental information about the progress of the war. The President appointed to the Committee these three cabinet members, under the chairmanship of George Creel.

Creel, a widely known editor and writer, set up an active and vigorous organization which came to affect the lives and thoughts of all Americans. He quickly issued to American newspaper men a pamphlet setting forth types of news which might hamper the war effort. On the cover was this quotation from President Wilson: "I can imagine no greater disservice to the country than to establish a system of censorship that would deny to the people of a free Republic like our own their indisputable right to criticize their own public officials. While exercising the great powers of the office I hold, I would regret, in a crisis like the one through which we are now passing, to lose the benefit of patriotic and intelligent criticism."[4]

[2] *Suppression of the Chicago Times.* Pamphlet.
[3] *Works,* Nicolay and Hay, Tandy edition, X, 108.
[4] Letter to Arthur Brisbane quoted in *Official Bulletin.* June 2, 1917.

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Mr. Creel placed news in three categories: (1) dangerous news, which included stories of naval and military operations in progress, movements of Allied or American warships, phases of submarine warfare, and the like; (2) questionable news, such as sensational rumors, which should be published with great caution, and usually only with approval of the Committee on Public Information; and (3) routine news, which constituted the great bulk of information. Editors were invited to submit any articles about which they had doubts. An article approved by the Committee was stamped in one of two ways: "Passed by the Committee on Public Information," indicating that it could be published safely but not guaranteeing its accuracy, or "Authorized by the Committee on Public Information," showing that it had been investigated and officially approved.

Such work represented the negative, or censorship, side of the Creel Committee. Its greatest activity, however, was the positive or propaganda phase of distributing news and other material about the American war effort. The famous "Four Minute Men" spoke to theater audiences, clubs, and other public groups, urging their hearers to buy Liberty Bonds and War Savings Stamps. The movies were mobilized, a bureau of war photographs was established, special work was done with the foreign language groups and with labor unions. And as one of its major functions, the Committee took over the issuance of all Government news.

In the meantime, censorship of communications entering or leaving the country was developed by another committee. All wireless stations in the United States had been taken over by the Navy in 1914, and on April 28, 1917, cables and telegraph and telephone lines crossing the border were placed under jurisdiction of the Army and the Navy. The Trading with the Enemy Act and the Espionage Act, which empowered the Postmaster-General to refuse the mails to certain matter considered detrimental to military success, formed the basis for a Censorship Board, created by President Wilson in October, 1917. Serving on this Board were representatives of the Secretaries of War and Navy and of the Postmaster-General and the War Trade Board, along with Mr. Creel. This organization directed censorship of the foreign mails and cables. The Post Office Department paid the expenses and supplied a good share of the workers.

This postal censorship was a tremendous undertaking. The mails to be examined were those not already censored by the Allies—chiefly mails to and from Spain, Latin America, and the Orient.

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Every agency represented on the Censorship Board was interested in obtaining special information for itself. The War Trade Board sought news of international commerce and possible economic aid to the enemy. Military Intelligence and Naval Intelligence wanted to learn whether information about military matters was being sent out of the country. By the end of the war, more than 250,000 persons had been at some time on a list of censorship suspects.

Such was censorship in the United States up to the present war. Many other countries had not fared so well. In the totalitarian nations especially, freedom of expression has long been a farce, even in peace-time. A dictatorship, in war or peace, must suppress even constructive criticism if it is to maintain its power. But in a modern democracy censorship takes on a quite different pattern.

Less than two weeks after the Japanese attack on Pearl Harbor, President Roosevelt established the Office of Censorship. Acting under the first War Powers Act just passed by Congress, he authorized the Director of Censorship to censor, "in his absolute discretion, communications by mail, cable, radio, or other means of transmission" between the United States and foreign countries. The President also created a Censorship Policy Board, with the Postmaster-General and other high government officials as members, to advise the Director of Censorship.

Also, the President issued a statement summarizing government objectives in the censorship program, and saying:

"All Americans abhor censorship, just as they abhor war. But the experience of this and of all other nations has demonstrated that some degree of censorship is essential in war-time, and we are at war.

"The important thing now is that such forms of censorship as are necessary shall be administered effectively and in harmony with the best interests of our free institutions.

"It is necessary to the national security that military information which might be of aid to the enemy be scrupulously withheld at the source.

"It is necessary that a watch be set upon our borders, so that no such information may reach the enemy, inadvertently or otherwise, through the medium of the mails, radio or cable transmission, or by any other means.

"It is necessary that prohibitions against the domestic publication of some types of information, contained in long-existing statutes, be rigidly enforced.

"Finally, the Government has called upon a patriotic press and radio to abstain voluntarily from the dissemination of detailed information of certain kinds, such as reports of the movements of vessels and troops. The response has indicated a universal desire to coöperate."[5]

[5] Statement to the press, Dec. 16, 1941.

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This was the birthright and charter of the Office of Censorship; the arduous labor of setting up the necessary machinery in the crowded precincts of war-time Washington remained to be accomplished. Within a matter of weeks, however, all divisions were functioning. When the organization is completed, the Office of Censorship probably will have about 16,000 employees, all approved by the Civil Service Commission. Only a handful of the personnel is in Washington. The bulk is engaged in censoring mail at ports and border cities.

From a physical standpoint, the biggest job of the Office of Censorship is examining the millions of communications—letters, cablegrams, radiograms, and long distance telephone calls—which enter or leave the United States. When one considers that our boundaries stretch for 18,000 miles, one can understand the scope of that problem.

The difficulties are increased by the fact that since the first World War there has been a tremendous change in the nature and amount of international communications. The far greater use of the cable and the radiotelephone has been paralleled by the development of transocean air mail lines, and by a tremendous growth of communication of all kinds with Latin America.

To attack this situation, we did have from the beginning a nucleus of trained personnel. For two years, a group of officers in the Military and Naval Intelligence Services had been studying censorship problems, as a part of the general program of planning for a possible war. As a result, these officers were able to begin the actual censorship of foreign cables and mails within a few hours after the raid at Pearl Harbor. When the Office of Censorship was established, this Army and Navy personnel was transferred *in toto* to the new agency, and it carries on in complete independence of the War and Navy Departments.

Postal and cable censorship stations are now operating in the principal ports of the United States and its outlying territories. Through these stations pass letters and cablegrams bound to and from countries which are not occupied by the enemy. It is illegal to communicate with enemy territory, with two exceptions. First, communications of a restricted character can be sent under certain conditions to prisoners of war, and second, the American Red Cross will transmit short messages of a personal nature to relatives or friends in occupied lands.

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Postal censorship naturally requires the closest coöperation with post office employees, who, somewhat reluctantly, I suspect, turn over sack after sack of mail to the censorship stations in or near the post office buildings. The censors take every precaution to keep the mail as secure and as private as possible, examining letters one at a time to prevent mix-ups.

Who are the censors doing this work? First, most of them are American citizens, and all are men and women of unquestioned loyalty to the United States. All take a brief training course to show their aptitude. Some are translators—our stations are prepared to handle communications in more than one hundred foreign languages. Others are specialists in various fields, such as business and finance, able to spot suspicious transactions of all types.

In general, the censors seek to stop any information which the enemy would like to have. Basically, that consists of defense matters, shipping data, weather conditions, and details of war production. Each letter presents a new and individual case that calls for the censor's best judgment.

One of several things may be done to letters which are not found acceptable. Sentences or paragraphs may be cut out with scissors; the entire letter may be suppressed; or it may merely be delayed until the information which it contains could no longer serve any dangerous purpose. Every letter passed by the censor is resealed with a slip of paper bearing the examiner's number, and then is placed once more in the mails.

It is the inevitable lot of censorship to be blamed for many things. Foreign mail is delayed in war-time by numerous causes, but principally by a general dislocation of shipping. Mail boats are few and far between; generally they are in a slow convoy, but the irate user of the mails lays all of his troubles at the door of the censor, although the actual truth is that the American censorship process seldom occupies more than twenty-four hours.

Censorship for cablegrams and radiograms is similar to the examination of the mails. Censors are stationed in cable offices and go over each message carefully. In peace-time, cablegrams often are so abbreviated, because of the cost, that only the sender and recipient can figure out the meaning. Obviously that would be dangerous in war-time. Therefore, the censor requires that the meaning of each cablegram be clear to him. A few widely known commercial codes are permitted.

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Border censorship applies to everyone alike. The only exceptions relate to classes of mail and not to individuals. Official mail, including, of course, diplomatic mail, is exempt from examination. But the private mail of every individual is subject to censorship, whether or not he occupies an official position. We have found this the only practical method; if we should set up a "white list" of exempt individuals, thousands of Americans would find good reason why their names should be included, and the delay and extra expense to the Government arising from constant references to such a list would be tremendous.

To most individuals, this censorship represents little more than an annoyance, but to business men delays and deletions may be an extremely important matter. The Trading with the Enemy Act provides that Americans shall not do business, even indirectly, with enemy nationals. Therefore it becomes necessary for many corporations to apply for special licenses if they want to follow through on certain foreign transactions. These applications are refused whenever it is found that the enemy would profit.

At the same time, however, censorship tries to do everything possible to expedite legitimate foreign trade. To that end, we have set up a special system in coöperation with the Board of Economic Warfare by which technical and scientific publications can be licensed for mailing abroad. Similarly, we have arranged, in cooperation with the Bureau of Customs, to examine all photographic films entering or leaving the United States.

Other phases of border censorship need not be enumerated. Mention of one of these may provoke a smile, although actually it presents an important problem. It concerns carrier pigeons. There are literally millions of carrier pigeons in the United States, and many of them are almost unbelievably clever in their operations over wide areas. We must be certain that they are not used to carry messages from enemy agents in the United States to associates outside the country.

No law forms the basis of the voluntary censorship of the domestic press and radio. It is entirely coöperative, a patriotic contribution by editors and broadcasters to the national security. In my opinion, this is the heart of all our censorship work. What the enemy does not learn in the first place, he cannot sneak out of the United States.

Press censorship represents a major sacrifice by the publishing

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industry. And when I speak of the publishing industry, I do not mean newspapers alone, but magazines, books, house organs—everything which appears in printed form. The system does not represent "business as usual" on news desks, but neither does it mean a news or editorial black-out.

I should like to say parenthetically that the Office of Censorship does not prepare or issue news. It does not have a single press agent. Government information is not funneled through its staff. Instead, each federal department and agency continues to give out its own news under the coördination of the Office of War Information.

As assistant director in charge of the Press Censorship Division, we were fortunate in obtaining the services of Mr. N. R. Howard, editor of the *Cleveland News*. Associated with him are a half-dozen of the most capable and experienced managing editors in the country, also on leaves of absence.

Until the Office of Censorship was established, the War Department, the Navy, and other government agencies having a share in the defense program made requests of newspapers, asking them not to print certain types of information. The situation naturally caused confusion, because sometimes the requests overlapped or conflicted. The first job, therefore, was to codify all these restrictions. In consultation with interested government officials and an Advisory Council from the publishing industry, the Office of Censorship prepared and issued a Code of War-time Practices for the American Press.

This Code does not order papers to print or to withhold anything whatsoever. It lists the types of information which the Government feels should be omitted for the effective prosecution of the war, and asks the coöperation of the papers. Thus every editor, every copy-reader, every reporter and writer, becomes his own censor. There are, of course, many border-line cases in which the editor or writer is doubtful, and these cases can be submitted to the Office of Censorship for prompt decision.

The news which the Press Code asks editors not to print falls into several classes. The first section deals with troops, for it is obvious that the enemy would like to know where we are placing our forces. We ask, therefore, that papers do not publish, except on the basis of official disclosure, news about the general character and movements of United States Army, Navy, or Marine Corps units—their location, identity, composition, equipment, or strength. An excep-

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tion is made for news of home-town boys, provided military units in foreign service are not listed.

The next section of the Code concerns ships. We ask papers not to print the location, movements, or identity of naval and merchant vessels of the United States or the United Nations. We ask the omission of such details as the port and time of arrival or departure, the nature of cargoes, the existence of mine fields, etc., unless the Government, for sufficient reasons, makes the information available officially. The timing of war news is an important function which is best left in the hands of the Government. Thus the Navy sometimes withholds news of ship sinkings for several days. To do otherwise would amount to spotting the enemy's shots for him while his submarines still are on the target.

Restrictions also are placed on the disposition, movements, and strength of Army or Navy air units; the location of forts and other fortifications; the location of coast-defense emplacements and anti-aircraft guns; the location of bomb shelters; and the location of camouflaged objects. Provision is made for reporting air raids on the United States.

An important section of the Code concerns war production. Papers are not asked to withhold information which the public can easily acquire for itself, such as that a new factory is being built, but they are requested not to carry details such as the exact type of production, schedules, dates of delivery, or progress; estimated supplies of strategic and critical materials available; or nation-wide "round-ups" of procurement data except when this composite information is officially approved for publication.

Weather news may be of great importance to the enemy. Word of a storm in the Midwest may enable him to chart weather conditions over the Atlantic three or four days in advance. He can gauge his plans for submarine attacks and for possible air raids. We have asked papers to omit weather forecasts other than those officially issued by the Weather Bureau; and the Weather Bureau, of course, does not go into too many details.

These and a few other miscellaneous restrictions apply not only to news stories and magazine articles, but to advertising matter, letters to the editor, columns, and photographs. In other words, the Code covers anything that can be printed.

But the Code, of course, is no magic formula that always turns up the right answers. Its application often becomes a matter of

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personal judgment. One editor decides that he should not print a certain story. Another, equally patriotic, regards the Code as imposing no restriction on the same story. He goes ahead and prints it. His competitor naturally is annoyed, for his only reward is a clear conscience.

The Office of Censorship gets seventy-five to a hundred inquiries a day from newspapers and magazines, and naturally many complaints. Some of the questions can be answered by a quick "Yes" or "No" on the telephone; others may require consultation with technical experts. The censors do not pass on the accuracy of statements; they merely tell the editor whether the story would give information to the enemy. I suppose there always will be some confusion, some disappointments, in the operation of this voluntary system. But, all in all, editors are giving it their wholehearted support.

A code also was prepared for the domestic broadcasting industry, which has demonstrated equal patriotism in accepting voluntarily the restrictions laid down. In general, these restrictions parallel those in the Press Code. But in some respects they are much more stringent, because of the peculiar character of radio broadcasting.

We can stop a newspaper at the border if it contains objectionable matter, but we cannot stop a broadcast at the border, and many of our larger stations can be heard distinctly far out at sea and hundreds of miles to the north or south. Furthermore, radio transmission is instantaneous, whereas the dispatch of a newspaper abroad requires time, and a time lag always is important in censorship.

Quite aside from the question of news broadcasts, the fact that many radio stations can be heard outside the country raises other special problems. It is well known that enemy agents could, if permitted, use the microphone to transmit information by means of a prearranged code. For this reason, the Office of Censorship asked that certain poorly controlled quiz programs and the so-called "Man in the Street" programs be discontinued completely.

Of course this interdiction does not apply to that type of quiz program where the integrity of the participants is known in advance, or where the participants are selected at random from a studio or theater audience of several hundred persons. In such cases there is little likelihood that an enemy agent, by his own initiative,

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could gain access to the microphone. But there is a real danger in programs which take the microphone to a street corner and let any passerby who elbows his way through the crowd answer a few questions. The mere mention of a man's name, although sounding innocent to the broadcaster and the average listener, might be a special signal to another agent.

The only other type of program greatly affected has been the request program, in which the station played special musical selections at the request of listeners. It is evident that a request to play "Deep in the Heart of Texas," dedicated to Cousin Sarah, might easily be a signal to an enemy agent. Stations have been asked not to honor requests at specified times, but to play them at some future date not indicated in advance.

Foreign language broadcasts are carefully checked, but we have not acceded to proposals from some quarters that all foreign language programs be discontinued. There is no question that these programs and the foreign language press reach many good American citizens who could not be reached in any other way with news of the war effort and appeals to buy war bonds. All the stations broadcasting in foreign languages are owned by American citizens and, of course, are operated under government license.

From this outline it becomes apparent that American editors and broadcasters really are their own censors. It is a heartening example of democracy at work. In no other nation is radio operating under so liberal a program. In no other nation does the press retain so much of its peace-time freedom; there is no censorship of opinion, providing, of course, that statements are not seditious.

Thomas Jefferson wrote in 1787: "The people are the only censors of their governors; and even their errors will tend to keep these to the true principles of their institutions. To punish these errors too severely would be to suppress the only safeguard of the public liberty. The way to prevent these irregular interpositions of the people is to give them full information of their affairs through the channel of the public papers, and to contrive that those papers should penetrate the whole mass of the people."[6]

Jefferson's words apply today. The Government has an important duty in making certain that, although military information must of course be censored, the people receive all possible news about the war and the Government's program to achieve victory.

[6] Letter to Edward Carrington from Paris, Jan. 16, 1787.

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Only in a dictatorship can the people be kept in ignorance. The first step in understanding our problems is to know what they are. Then an enlightened public becomes an intelligent public, which can put forth all its energy and zeal in the prosecution of the war.

Although censorship obviously never can be welcome, there are some precepts which can make it equitable and give the public a degree of confidence in its administration: (1) Censorship is a war measure. It is justifiable only in so far as it aids prosecution of the war. (2) Censorship is no respecter of persons. No one is exempt. But censorship does respect the mails and the cables. (3) Censorship is frank with the public. Rules and the reasons for them are published, for prevention in censorship is much better than cure. (4) The best censorship, if any censorship can be so called, is one of facts rather than of opinion. The key to suppressing information is whether it would help the enemy.

It has been said with great truth that no man actually is wise enough or good enough to be a censor. That is why it is important that censorship be put in charge of men who believe with all their heart and mind in everything that censorship is not—freedom of speech, freedom of the press, and all the other liberties inherent in democracy itself. For the good of his soul, it would be well for every censor to keep framed upon his walls and constantly before his eyes this dictum of Owen Tweedy: "A censor needs the eye of a hawk, the memory of an elephant, the nose of a bloodhound, the heart of a lion, the vigilance of an owl, the voice of a dove, the sagacity of Solomon, the patience of Job, and the imperturbability of the Sphinx."

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WAR-TIME GOVERNMENT IN CHINA[1]

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I

Since the establishment of the Nationalist régime in Canton in the year 1925 by the Kuomintang, the government of China has undergone only one major structural change. At the beginning, aside from the machinery which assured control of the government by the Kuomintang, the one organ of political power was the State Council, under which functioned the various departments of administration, civil and military, of law-making and of adjudication. The State Council was a going concern, and the various departments were subordinate organs. In October, 1929, there occurred a change. The Five Yuan were set up, each responsible to the Party machinery and each functioning independently. The State Council was retained, but, except for a brief interval, it no longer enjoyed substantial power.

The government of China, as it stood at the beginning of the war, was very much the government as set up in 1929, though necessarily with many important modifications. Supreme power rested with the Central Political Committee, which was a committee of the Central Executive Committee of the Kuomintang, charged with the direction and supervision of the government. It was not to be confused with the Central Executive Committee itself. While the Central Executive Committee met only at very long intervals, usually once or twice a year, and, being a large body of 300-odd persons, did little more than hear speeches and reports and pass resolutions, the Central Political Committee was a going concern and met every week to decide on important matters of state. It generally comprised all the important members of the Party and the Government, thus facilitating its assumption of power. At times when its membership was too large, as a result of the members of the Central Executive and Control Committees claiming the right to be present at all its meetings, power sometimes passed either to its presidium or to its Committee on National

[1] Dates, citations, and references are not given in this article. They can generally be found in Wang (Shih-chien) and Chien (Tuan-sheng), *Comparative Constitutional Law*, Bk. VI, Chap. 4. A third and revised edition of this treatise was published by the Commercial Press in July.

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Defense, which would naturally be a much smaller body than the Central Political Committee itself.

At the apex of the government, which since 1929 was officially styled "the National Government of the Republic of China," stood the State Council. In theory, it was the highest organ of government, but, consisting of some thirty persons who were mostly either no longer active in politics or otherwise out of power, it in practice wielded no power whatever and had no peculiar function of its own.

The chairman of the National Government was head of the state and chairman of the State Council, whenever the Council met. As chairman of the State Council, his duties were light. As head of the state, he had naturally many formal functions which commonly pertain to the head of a state.

Under the State Council stood the Executive Yuan, the Legislative Yuan, the Judicial Yuan, the Control Yuan, and the Examination Yuan—five yuan in all, as was prescribed by Dr. Sun Yat-sen in his teachings. The theory of separation of powers was well-known to Dr. Sun, but with the three established powers he also listed the examination and control powers. He wanted to see examination power independent of the executive power, as he held the old Chinese institution of scholastic examinations in veneration. He took the power of control away from the legislative department, as he seems to have been struck by the tyranny of parliaments, especially the Chambers of the Third Republic. So constituted, none of the five yuan could ever attain the height that is the British Parliament's, for instance. This is natural in view of the fact that in the complete scheme of his so-called "Five-Power Constitution," there is to be a people's congress in control of all the yuan. As there was as yet no such congress, any yuan in the hands of a strong man was in a position to overshadow all the other yuan, as was not infrequently done.

If the five-yuan system followed the premeditated teachings of Dr. Sun, the set-up of an independent Military Commission was occasioned by the exigencies of the time. Both during the days of the Northern Campaign (to destroy the militarist régime at Peking) and after Japan invaded Manchuria, it was considered necessary to establish a Military Commission which could unite in its hands all the military functions and be under a man of the highest military prestige. There was, of course, no theoretical obstacle to

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subordinating the Commission to the Executive Yuan. But the head of the Commission might be a man of greater prestige than the head of the Executive Yuan, and it might not be possible for the Executive Yuan to control the Commission. Hence ever since its inception, the Military Commission had always enjoyed a position of eminence, independent of the Executive Yuan. Even at the start of the war in 1937, when General Chiang Kai-shek was concurrently president of the Military Commission and president of the Executive Yuan, the two offices were not amalgamated and the Commission remained on an equal footing with the Executive Yuan.

There was yet another office which also exercised an important function. The advocates of the five-power system think that to entrust the Executive Yuan or its Ministry of Finance with the preparation of the budget would so greatly increase the power of the Executive Yuan as to make a proper balance of powers impossible. So they insisted on setting up an independent office which should be in charge of the functions of preparing the budget and of supervising its execution, and in 1931 the so-called office of the Comptroller-General was set up and placed directly under the State Council. To it the functions of collecting statistics and keeping accounts also belonged.

Were the foregoing all the principal organs of government, their interplay would already present a picture of great complications. But they were not all. There were Kuomintang organs as well, which in no negligible degree performed governmental functions also. Theoretically, except the Central Political Committee stated above, Party organs perform only party functions; but in truth many such organs went far afield into the realm of government and administration. The Standing Committee of the Central Executive Committee met as frequently as once a week, and there not infrequently policies of government were discussed and decided upon. If it encroached upon the proper authority of the Central Political Committee, the latter was in no position to complain. Also under the general supervision of the Standing Committee, the Central Executive Committee had subordinate to it many departments, such as the Departments of Organization, of Public Information, of Social Affairs, etc. Some of these departments, especially the Department of Public Information and the Commission on Training, were in fact administrative departments of no mean propor-

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tions. But, being Party departments, they were of course not subject to the control of the Executive Yuan.

The exercise of government functions, within such a frame, naturally could not be very simple. Both the All-Nation Congress and the Central Executive Committee of the Kuomintang were policy-making organs. That was obvious enough. Within the frame of government, policy-making power was lodged in the hands of the Central Political Committee. Neither legislation nor administration nor any other function could be outside the jurisdiction of that Committee. Legislation could be initiated by the Central Political Committee, by the State Council, by any of the five yuan other than the Legislative Yuan, or by members of the Legislative Yuan; but by whomsoever initiated, the bill must first be submitted to the Central Political Committee for consideration of the legislative principles therein embodied, unless the Committee waived that right in favor of the Legislative Yuan. Though on many occasions the Committee did waive the right, its preëminence as a legislative organ was never impaired, since it had the right to order the Legislative Yuan to reconsider the bills the latter might have passed.

In matters of administration, the control of the Central Political Committee was in practice perhaps less rigid. Whereas it had a voice in all enacted bills, it naturally could not go into every act of administration. Important matters of administration should in theory be referred to it for consideration. But there is no precise demarcation between matters which are important and matters which are not important. Hence if the president of the Executive Yuan happened to be the strongest leader of the Party, he could always enjoy a certain degree of freedom. It was only when the president was not as strong as some other leader or leaders of the Central Political Committee that the Committee came to exercise a minute control over administration.

The making of a budget illustrated most aptly the power of the Central Political Committee. Estimates were naturally prepared by the various spending departments and the Ministry of Finance and were compiled into one book of estimates by the Office of the Comptroller-General. But before they were considered either by the Executive Yuan or the Legislative Yuan, they must be laid before the Central Political Committee for general scrutiny. It was there that expenditures were drastically cut down and means of

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making up the deficits were discussed. The function of the Executive Yuan was little more than apportioning the appropriated sums to the various services, and that of the Legislative Yuan little more than formally enacting the budget.

Administration was further complicated by the existence of the Military Commission and administrative departments of the Party. In military matters, both the Executive Yuan and the Military Commission claimed control. The latter, being independent of the former, was considered the highest military organ. But the Ministry of War was an integral part of the Executive Yuan. Through the Ministry, the Executive Yuan was able to exercise some control over military affairs. Therefore when the Yuan and the Commission were headed by one person, the Yuan was able to know much of the affairs military. But when they were headed by two different persons, the Yuan must give place to the Commission, as far as military administration was concerned. The position of the Military Commision *vis-à-vis* the Central Political Committee in matters of defense, then, very much resembled that of the Executive Yuan *vis-à-vis* the Central Political Committee in matters of administration.

Matters like censorship might fall within the competence of either the Department of Public Information of the Party or the Ministry of Interior of the Executive Yuan. In case of either positive or negative conflict, the issue had to be settled by the Standing Committee of the Central Executive Committee.

The judicial function and the functions of examination and control were supposed to be exercised independently, and the Central Political Committee should have no control over them. But that did not mean that they were entirely free from its control. The organization of the Judicial, Examination, and Control Yuan and their principal departments were determined by the Central Political Committee, and the important appointments were confirmed by it as well.

II

The war brought to the fore many problems of readjustment and reorganization, as war in any country will. There is, however, this great difference. In either a fully democratic or a fully dictatorial country, the most important demand would naturally be to strengthen the executive arm, with or without accompanying demand for the simplification of the law-making process. But in

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China, which had maintained a peculiar régime of party dictatorship, dedicated to democracy, the endorsement by the whole nation of a war to resist aggression led instead to the demand for a more democratic form of government.

There were many groups outside of the Kuomintang which for years had been demanding participation in the government. Among the organized groups, the Chinese Communist party was the best known. It had for two or three years past been making the creation of a popular front its cardinal policy. But democracy was not the catchword of the Communists alone. Other groups, and a large number of intellectuals who were not in any way affiliated with any party or group, have also been demanding democracy. When the war broke out, it was no longer possible for the Kuomintang entirely to ignore such demands. An organization called the Advisory Council of National Defense was consequently speedily set up, to give advice to the Supreme Council of National Defense, which had then just assumed the functions of the Central Political Committee. It was a small body, consisting at first of only seventeen persons, and when it was superseded by the People's Political Council, almost a year later, it had no more than twenty-three members. In it were representatives of the Communist, the Youth, and the Nationalist Socialist parties, of the so-called Third Party, and of the Patriotic Federation, and also outstanding liberal independents like Hu Shih. As the mouthpiece of all the groups, organized or unorganized, outside the Kuomintang, it exerted considerable influence on the government, though constitutional power or power of compulsion was denied it. It met often, usually once a week, and its deliberations were facilitated by being presided over by the president of the Supreme Council of National Defense himself.

Thus began a series of partial attempts at transforming the Chinese polity into a democracy. The Advisory Council of National Defense led to the establishment of the People's Political Council, and the latter to that of the provincial and district political councils.

The People's Political Council was a direct outgrowth of the Advisory Council of National Defense. The Advisory Council held its first meeting on August 17, 1937. At the end of 1937, the Supreme Council of National Defense passed a resolution to have the Advisory Council expanded to seventy-five members. Before this

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could be realized, opinion was, however, gathering strength that something more akin to a representative body was needed. In conformity with this opinion, the Extraordinary All-Nation Congress of the Kuomintang, in March, 1938, passed a resolution declaring for the convening of a People's Political Council.

The People's Political Council was first convoked on July 6, 1938. It had then 200 members, divided into four categories: (A) eighty representing the provinces and special municipalities, nominated jointly by the government and the Kuomintang executive committees of the provinces and municipalities; (B) six representing Mongolia and Tibet, nominated by the Commission on Mongolian and Tibetan Affairs; (C) six representing the Overseas Chinese, nominated by the Commission on Overseas Affairs; and (D) one hundred representing cultural and economic bodies and also political activities, nominated directly by the Supreme Council of National Defense. The numbers nominated were to be twice as many as numbers apportioned; final choice rested with the Supreme Council of National Defense.

When the term of the First People's Political Council expired in 1940, membership was enlarged by forty and the manner of appointment modified, increasing the number in the first group by two and in the fourth by thirty-eight, and requiring representatives from those provinces and municipalities where provisional political councils had already been established to be elected by those councils. Since by 1940 provisional political councils were in existence in a majority of the provinces and municipalities, most of the first group ceased to be purely nominated members. The percentage of the elected members will be further increased in the Third People's Political Council, for, according to its new Organic Law of March 16, 1942, when it convenes in the fall of 1942, out of a total of 240 members, the first group will have 164, all of whom will be elected by the provisional political councils of the provinces and municipalities, except in those few where occupation by the enemy is rather effective, such as the Northeastern provinces, Hopei, Peiping, Tientsin, and a few others.

It thus can readily be seen that while the People's Political Council cannot claim fully to represent the people, there has been a consistent effort to make it more truly representative. It is true that category D of appointed members, though greatly reduced in number—sixty in the Third People's Political Council—is still

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retained. But harsh criticism of that feature is not warranted. In his last years, Dr. Sun Yat-sen was very insistent in his advocacy of functional representation to make up for the deficiencies of geographical representation. Functional representation is no longer a panacea as it was in the early 'twenties, but it is only natural not to expect the Kuomintang to give it up. Furthermore, the experience with the first two People's Political Councils shows that appointed members are not, thanks to the Chinese genius for appeasing the opposition, incompatible with pliancy. In fact, category D has always included some of the most outspoken critics of the government, as well as some of the most outstanding leaders of China, again outside the Kuomintang.

Of the quality of members, it may be said that on the whole they have been on a high level and perhaps as good a lot as a purely elected body can show in China at present. The Supreme Council of National Defense, or its successor, the Supreme Committee of National Defense, has seen fit to provide the People's Political Council with a majority of Kuomintang members. But this is only natural, and no sane observer of Chinese politics will ever suppose that in a freely contested national election the Kuomintang would be reduced to a minority. The sagacity of the Supreme Council or the Supreme Committee does not lie in getting a majority of Kuomintang members elected or nominated, but rather in seeing that the various other parties and interests are represented in, and prominent non-Kuomintang leaders appointed or elected to, the People's Political Council. True, the Communist party has complained that it had no more than seven members in both the First and the Second Kuomintang; but such complaint is confined to that party alone and not shared by others. And for that matter, murmurs are heard among the rank and file of the Kuomintang because it, too, does not enjoy an ampler representation.

The powers of the People's Political Council have remained largely unaltered for all these years. The Council can both make proposals to the Government and question the Government about anything done or to be done. The Government is obliged both to make reports to the Council on important measures taken and to lay before it the important measures to be taken. *A priori*, this should enable the Council to have much voice in the affairs of the Government. But owing first to the proviso that in case of emergency the Supreme Council (or Committee) of National Defense

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may dispense with the obligation of securing the previous approval of the People's Political Council for any measure to be taken, and second to the lack of any specification as to what constitutes an "important" measure, the Government is free either to lay or not to lay before the People's Political Council any measure to be taken, either to report or not to report any measure that has been taken. As to the proposing power of the Council, it is limited by the fact that the Supreme Council (or Committee) of National Defense is not obliged to adopt the proposals. The questioning power is therefore perhaps the most effective weapon at the disposal of the People's Political Council. Though there is no means of compelling a minister to answer a question or to disclose a secret, no minister can quite be free from the anxieties of a searching question from the floor of the Council. In this way, the Council contributes no little to making the Government more responsible to the wishes of the country.

If the People's Political Council is to exercise its functions effectively, it perhaps should meet more often than hitherto. At the beginning, the Council was required to meet every three months; but since 1939, the statutory requirement has been only a semi-annual session. In reality, owing to the long intervals required to renew the successive Councils, there have been, in all, only seven sessions, five of the First Council and two of the Second. The session itself is also extremely short, only ten days, which of course is sufficient neither for deliberation on measures to be proposed nor for scrutiny of measures taken or to be taken by the Government. The Government has the right either to call an extra session or to prolong a regular session beyond the statutory duration, but it does not view the exercise of that power with any satisfaction, and has never exercised it. Between sessions, there is also a Recess Committee of twenty-five, elected by the People's Political Council and meeting every other week. But the general rule that a committee charged with looking after the general interests of the whole body and not charged with any more specific function is often a committee without power, holds true in this case. Hence the existence of a Recess Committee does not make up for the infrequency of the sessions of the People's Political Council itself.

To pass any definitive judgment on the People's Political Council is not easy. It would be extravagant to claim that in it Chinese democracy has found anchor, or even to claim that through it

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China has made a long stride along the road to democracy. But if the function of a democratic assembly is to voice the opinion of the people and to make the government feel obliged to respect that opinion, the People's Political Council is not to be dismissed as a nonentity merely because it is not a fully elected assembly or because it has yet to acquire the power of compulsion.

As a corollary to the People's Political Council, both the provinces and the districts below are to have political councils. In most of the provinces, district political councils will be established by the end of 1942, and they will be elected by the congresses of urban and rural communities and by the professional bodies of the district, the latter not to elect more than thirty per cent of the members. The provincial political councils are to be elected by the district councils. The elections are, therefore, very indirect; but it is nevertheless a proper beginning of the exercise of the electoral right. Pending the establishment of definitive provincial political councils, there have been provisional provincial political councils, made up of persons chosen by the Supreme Council (or Committee) of National Defense on nomination of the district governments and district executive committees of the Kuomintang and also professional bodies of each province, the nominations being very much like those in connection with the People's Political Council. In this respect, special municipalities are treated like the provinces.

The political councils of the provinces and districts are given similar powers, and enjoy a similar status, in the provinces and districts to the People's Political Council in the nation. Actual functioning varies, of course. The usefulness of a provincial provisional political council depends naturally on the caliber of the men who compose it and the attitude of the provincial government toward the council, which is no part of the government.

Besides setting up the various political councils, there has been a demand for establishing a contitutional régime and transforming the government by the Kuomintang into a government by the people. This is no new demand. Before the war began, people had insisted upon it, and the Kuomintang, following the teachings of Dr. Sun, its founder, had promised it. In fact, a draft constitution was completed and formally proclaimed by the Government on May 5, 1936, and election of the National Congress was proceeding when the war broke out. If there had been no war, the Congress

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was to have met on November 12, 1937. Repeated demands for constitutionalism raised by the groups in the People's Political Council actually prompted the Kuomintang, through the Central Executive Committee, in November, 1939, to declare for the completion of the election of the delegates to the Congress and for the convening of the Congress on November 12, 1940. The elections held before the outbreak of the war were, as was to be expected, strictly managed by the Kuomintang; and the delegates chosen were mostly partisans of the Kuomintang. The constitution made, and the new government organized, by such a Congress naturally would not meet the wishes of the other parties. But the Kuomintang could not do otherwise. It could not be persuaded to concede too much to its opponents. Seeing that the new decision to convoke the National Constitutional Congress would do little to satisfy the demand for constitutionalism of the other parties, it rescinded it and deferred the convening of the Constitutional Congress until after the conclusion of the war, thus terminating, perhaps once for all, the controversy over establishing constitutionalism during the war.

III

In so far as the government proper is concerned, there have been surprisingly few changes—surprisingly, because the war has been both very long and of a tremendous magnitude. The pre-war framework of the State Council superimposed upon the Five Yuan, with the Military Commission assuming an equal position, has remained unaltered. It is true that for a time, immediately after the war began, there was a movement to disengage a large part of the personnel of the government and to allow the non-essential organs to fall into desuetude. Thus the Legislative Yuan was practically a dead agency between July, 1937, and April, 1938, and legislation was by action of the Supreme Council of National Defense alone, without the concurrence of the Yuan. The Examination Yuan was also dormant for over a year. The Control Yuan, which has no day-to-day functions to perform, was virtually dead for even a longer period. But, one after another all were resurrected, and by the early months of 1939, the Five Yuan had been restored to their pre-war basis. The State Council itself has scarcely met since the war began; but that, too, can hardly be considered a change, since the Council has no definite duties assigned to it, and even during

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the years immediately preceding the war its meetings had become rarer and rarer.

The most serious attempt at overhauling the machinery of government to meet the exigencies of the war was when the Standing Committee of the Central Executive Committee of the Kuomintang resolved to proclaim the Articles of Organization of the General Headquarters, decided upon previously by the Central Political Committee, and to authorize the president of the Military Commission to function as the Generalissimo of the Armed Forces. There was then mooted the question of having the General Headquarters supersede all other organs of government and bringing all the indispensable departments of administration within the framework of the General Headquarters, retaining only the chairmanship of the National Government and also the Supreme Council of National Defense, which was then taking the place of the Central Political Committee. If this broad proposal had been realized, there would have been nothing short of a complete overhauling of the system then prevailing. It was, however, dropped almost as speedily as it was made. Even the proclaimed Articles of Organization for the General Headquarters was not put into actual operation. The only thing left of the whole ambitious scheme was that General Chiang Kai-shek, president of the Military Commission, became Generalissimo *de jure* as well as *de facto* by the authorization of August 27.

In lieu of organizing an all-absorbing and all-powerful General Headquarters, the Military Commission was very extensively expanded and strengthened. Before the war, it had as its subordinate offices nothing but minor ones necessary to its proper functioning. The great military departments, such as the General Staff, the Inspectorate-General, and the Military Advisory Council, although under its supervision, were separate organizations, and the Ministry of War was one of the ministries of the Executive Yuan. But in August and September of 1937 there were caused to be organized seven great departments of administration, namely, those of Political Affairs, Military Operations, Heavy Industries, Light Industries, Public Information, Political Works (attached to the Armed Forces), and Transport—all directly under the Commission. These were known as First Department, Second Department, etc. As the ministries of the Executive Yuan, the departments of the Central Executive Committee, and some other independent

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administrative offices were left largely untouched, confusion and duplication of authorities became unavoidable. For instance, the new Department of Heavy and Light Industries and the Ministry of Industry of the Executive Yuan had virtually identical functions, while the Ministries of Railways and of Communications of the Executive Yuan performed more or less the same duties as those falling to the new Department of Transport. The arrangement was obviously unsatisfactory and further reorganization necessary.

A reorganization of January, 1938, was more rational, if less radical. The seven departments now gave way to the four departments of Military Operations, Military Administration, Military Training, and Political Works. The three great independent military establishments were brought directly under the Commission, the General Staff becoming the Department of Military Operations, and the Inspectorate-General that of Military Training, with the Military Advisory Council retaining its old nomenclature. But functions which are not strictly military were left in the hands of either ministries of the Executive Yuan or departments of the Central Executive Committee. The Department of Military Administration remains a dual organization, being also the Ministry of War of the Executive Yuan.

The reorganization described was of course not final. Later there have been many minor changes, adding this or transferring that to the Military Commission. But no attempt has been made to eclipse the Executive Yuan. As it now stands, the Military Commission has directly under it, besides the four Departments and the Military Advisory Council above-mentioned, the General Office (under a chief), the Naval Office (under a commander-in chief), the Air Office (under a commission with the Generalissimo himself as chairman), the Office of Transport-Control (under a chief), the Office of Military Servicing (under a chief), the Office of the Judge Advocate-General, the Personnel Office (under a chief), the Commission on Military Pensions, the Commission of Control, the Commission on Party and Political Affairs in War Areas, and finally the Liaison Bureau. All the Commands are, of course, also under the Military Commission. It will thus be seen that the Commission, though a vast organization, has its functions largely confined to things military. The most doubtful case is the Office of Transport-Control, which has taken over the management of high-

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ways, as well as the power of fixing priorities of transportation, from the Ministry of Communications.

There is yet another point in the reorganization of 1938 which requires mention. Before the war, the Military Commission was indeed a commission. As such, it was collegiate, and a meeting must be called when important matters of national defense (other than actual military operations, of which the President was by law to be in sole charge) were to be decided upon. But this was in theory only. The prestige of the then incumbent president, General Chiang Kai-shek, was such that power had long fallen into his hands, and the other members of the Commission were of little consequence. The conferring of the powers of Generalissimo on the President in August, 1937, caused the discrepancy between law and practice to disappear. The law was now also altered to make the President head of the Commission and other members merely assistants. The law also made the Chief of General Staff and the Deputy Chief who, together with the heads of the four Departments and the president of the Military Advisory Council, are *ex officio* members of the Commission, principal assistants of the President and empowered them to exercise general supervision over all of the departments, offices, commissions, and bureaus of the Commission. They thus out-rank other members of the Commission, though in practice they may not be able to exercise supervision except through the person of the Generalissimo.

The idea of setting up a General Headquarters, and also that of having a super-Military Commission dropped, there was naturally a necessity so to reorganize the Executive Yuan as to enable it to meet the requirements of the war; and in January, 1938, this Yuan was overhauled simultaneously with the Military Commission. Before the war, there were under the Yuan nine ministries (Interior, Foreign Affairs, War, Navy, Finance, Industry, Education, Communications, and Railways) and two commissions (Mongolian and Tibetan Affairs and Overseas Affairs). The Ministry of Navy was changed into the Naval Office and transferred to the Military Commission; the Ministry of Industry, together with some minor offices, were reorganized into a new Ministry of Economics; and the Ministry of Railways was merged into that of Communications —thus reducing the number of ministries from nine to seven. The change was dictated by considerations of both efficiency and economy. But subsequent changes have not been invariably in the

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interest of either, still less of both. In 1940, two new ministries were added. A Ministry of Agriculture was split from the Ministry of Economics, although there was little actual need for so doing. The Ministry of Social Affairs, so-called, was previously a department of the Central Executive Committee; with the transfer, there was much uncalled-for expansion. In 1941, there was added the Ministry of Food, necessitated by the acute problem of the rising price of grain and even shortage of rice. The raising of a relief organization to the status of an Executive Yuan Commission was also justified by the scale of work to be done. The organization of a Commission on Conservancy was a wise step, as it brought under its control a number of river boards. But, strange to observe, the Ministry of Trade ordered in March, 1941, to be set up by the Central Executive Committee to conduct the economic warfare has never been organized.

From the foregoing, it will readily be seen that in bold relief the war-time administration differs but little from the pre-war administration. True, the Military Commission has been much expanded, and the Executive Yuan has also undergone changes. But there have been few innovations altering either the character of any of the existing organs of government, be it the Military Commission, the Executive or any other Yuan, or the State Council itself, or the relationship between these organs. Whether this is because changes in the administrative system are not needed or are of little consequence, can best be answered by reference to the changed status of the Central Political Committee.

IV

We have said that the government of China is government by the Kuomintang, and that the Kuomintang used to control the government through the instrumentality of its Central Political Committee. It is in this agency that important changes have taken place, and generally to make it better suited for directing the war.

The Central Political Committee was itself fairly large, and when the war broke out, all members and reserve members of the Central Executive and Control Committees had a right to attend its meetings. This made it both unwieldy and unsuited to the conducting of war. On August 11, 1937, the expedient of a Supreme Council of National Defense was resorted to. This was no new thing entirely. In the days before the war, from 1933 to 1935, when the

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situation in North China, due to Japan's continuous aggression, was most tense, the Central Political Council (predecessor of the Committee) had made use of a small Committee on National Defense to consider and decide on weighty measures, in place of the plenary Council. When the Central Political Council was reorganized into the Central Political Committee at the end of 1935, membership was limited to twenty-five, and for a short while it was thought that the Committee could discharge all of its functions without again resorting to the device of a small Committee on National Defense. Unfortunately, the ranks of the Central Political Committee were soon swollen by the attendance of other members and reserve members of the Central Executive and Control Committees, not members of the Political Committee. At the beginning of 1937, by resolution of both the Central Political Committee itself and the Central Executive Committee, the Committee on National Defense was revived, again as a committee of the Central Political Committee. The new Supreme Council of National Defense was, on the contrary, a substitute for, and in authority equal to, the Central Political Committee. It had as its chairman the chairman of the Committee on National Defense, General Chiang Kai-shek, and as its vice-chairman the chairman of the Central Political Committee, Mr. Wang Ching-wei, who later stooped to be a Quisling. As soon as the Supreme Council was set up, the Central Political Committee virtually ceased to function, and between August 11 and November 13, when the Supreme Council resolved to suspend its powers, it held only two meetings. The resolution of November 13, of course, killed the Central Political Committee—at least for the duration of the war. A legally-minded person might indeed question the validity of a resolution passed to suppress a body which had created the body passing the resolution. But China was then at her most critical moment, and few were interested in legal niceties. The fact that the men in control of the Supreme Council were also in control of the defunct Committee was enough to warrant the temporary demise of the Committee.

The Supreme Council of National Defense was a smaller body than the Central Political Committee—which was the chief, if not the only, reason for its supplanting the Committee. By the Articles of Organization, it enjoyed emergency power of legislation not enjoyed by the Committee. Otherwise there was little difference

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between the two. The various committees which served the Committee also served the Council. The relation between the Council on the one hand and the Kuomintang and government departments on the other also more or less remained the same.

As time went on, it was found that the powers enjoyed by the Supreme Council were not enough, and that the procedure by which the Council exercised them was not direct and flexible enough to meet the needs of the war. In February, 1939, the Central Executive Committee, in a plenary session, sought to improve the situation by ordering the organization of a Supreme Committee of National Defense to take the place of the Council.

The Supreme Committee differs from the Supreme Council in several important respects. In the first place, power is more centralized in the hands of its president (who is, by the Articles of Organization, no other than the head of the Kuomintang himself, General Chiang Kai-shek) than in the hands of the chairman of the Supreme Council. In the second place, whereas the authority of the Council extended only to the departments of government, the Committee has authority over the departments of the Central Executive Committee as well. In the third place, whereas the Council could deal only with the Five Yuan and the Military Commission, the Committee can also issue orders to their subordinate departments. For this purpose, all the ministers, the heads of departments, and other principal administrators, wherever they belong, are made so-called "executive members" of the Committee, while other members share in making the orders.

The Supreme Committee is by no means a small body. It includes the members of the standing committees of the Central Executive and Control Committees, the presidents and vice-presidents of the Five Yuan, members of the Military Commission, and other members nominated by the president of the Supreme Committee with the consent of the Standing Committee of the Central Executive Committee. Allowing for duplicates, total membership is not likely to be below twenty-five. Out of these, the President designates eleven to constitute the Standing Committee. This is naturally a much smaller body than the plenum, which is attended not only by all regular members but by executive members as well. It is this Standing Committee which holds weekly meetings and transacts the ordinary business. The plenum seldom meets. But lately, even the meetings of the Standing Committee have also a

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tendency to be swollen by attendance of those who are invited to be present. For instance, some of the more important ministers of the Executive Yuan, and also the chairmen of the more important committees of the Central Political Committee, are often present.

With the establishment of the Supreme Committee of National Defense, policy-making and initiation and formulation of important measures have largely been centered in its hands. The Standing Committee of the Central Executive Committee still meets weekly, but its deliberations are now strictly confined to matters of party administration. It seldom goes out of its field to interfere with matters of state. In case of conflicting jurisdiction between Party and Government, it is generally the Supreme Committee that decides, thus avoiding overlapping or contradiction. The Executive Yuan, too, has its weekly meetings; but it also takes orders from the Supreme Committee. It may still propose important measures, but these must first be submitted to the Committee before they can be acted upon. In pre-war days, there might have been cases of the Executive Yuan forcing the hands of the Central Political Committee. That is not done now. The Military Commission is not so much concerned with policy as is the Executive Yuan. But if a measure involving policy is to be determined, it, too, honors the authority of the Supreme Committee.

As to the process of legislation, substituting the Supreme Committee of National Defense for the Central Political Committee, it is largely the same as before the war. There is, however, this difference: in case of emergency, the Supreme Committee is empowered to order the proclamation of a law without it first being enacted by the Legislative Yuan.

Proposals made by the People's Political Council are also acted upon by the Supreme Committee of National Defense. The Committee may order the yuan or department concerned to formulate the proposals into laws or orders, or may simply drop them. In other words, though the Supreme Committee is not by law above the People's Political Council, it in fact enjoys a superior authority over it, as it does over all departments, both of the Party and of the State.

The Supreme Committee of National Defense has under it several very important organizations. There is the Secretariat, which, like all secretariats in the Kuomintang and in the government, does a good deal of real work; and the Secretary-General

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has always been a member of the Standing Committee. There are five committees of the Central Political Committee on Law, Finance, Economics, Foreign Affairs, and Education. They serve the Supreme Committee in the same way as they served the Central Political Committee. There are also the Planning Commission and the Control Commission, both set up toward the end of 1940. The Planning Commission is headed by the president of the Supreme Committee himself, and the Control Commission (not to be confused with the Central Control Committee of the Kuomintang) is subdivided into two sections in charge of Party and Government affairs, respectively. The idea was to have the Planning Commission plan, the Government and Party administration execute, and the Control Commission check up on whether execution is in accordance with the plan. It can, of course, not be supposed that in a country where statistical data are either lacking or not always reliable—where administrative machinery is defective, and where war has done so much to disturb the normal situation—a scheme as ambitious as this can be put into operation, let alone successful operation. In fact, thus far the Planning Commission has trodden the path of planning cautiously, if not timidly. It has concerned itself only with a detailed scanning of the annual budgets. Even at that, it has never seen fit to go too deeply into the matter.

The key official in the Supreme Committee of National Defense, as well as in the entire Chinese political organization, is, it must be emphasized, the President. Organically, the President of the Committee and the Head of the Kuomintang are one and the same person. The Kuomintang has had no head since the death of Dr. Sun Yat-sen in 1925. Repeated attempts to make someone its head were doomed to failure, the reason being largely the coëxistence of several leaders who could lay claim to that exalted position one as well as another. But when the war came, one of these had already died and the prestige of General Chiang Kai-shek had grown to such heights that no one could dispute his leadership. The necessities of the war also made the restoration of the institution inevitable. So, at the Extraordinary All-Nation Congress, in March, 1938, General Chiang was elected Head of the Kuomintang. As such, he is, of course, entitled to direct any party organization in existence or that may be created. He presides over the plenary sessions of the Central Executive Committee and the meetings of the Standing Committee, as well as over the Congress. If he so

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chooses, he can be the head of the party organ that controls and directs the government. And he did choose to be the president of the Supreme Committee of National Defense. As long as the Kuomintang is the government, the president of the Supreme Committee is naturally all-powerful, with authority that cannot in any way be impaired by law.

If, therefore, General Chiang Kai-shek's authority is in law unlimited, in fact it is no less so, thanks to his concurrently holding the presidencies of both the Executive Yuan and the Military Commission. As head of the Party and president of the Supreme Committee of National Defense, he is not required to be president either of the Yuan or of the Commission. But the fact is that he is both. He has always been the president of the Military Commission. Of the Executive Yuan, he has been the president since the beginning of 1936, except for the interval 1938 to 1940. He was once also Speaker of the People's Political Council, and is still on its Presidium. Though from the institutional point of view the practice of one man's holding all the leading posts of party and government tends to make that government personal, there is a good deal to be said in its favor, as it doubtless facilitates the handling of many urgent problems so often besetting a government in war-time.

It should, then, be emphasized that the most significant change in the machinery of government during war-time has been the creation of the Supreme Committee of National Defense and the centralization of power in the hands of its president.

V

Reviewing the developments that war has thus far brought about and looking into the future, one cannot help being struck by a number of problems which will await solution when the war is over.

The Kuomintang has ruled China for fourteen years. It has no intention to perpetuate rule by one party, and has professed constitutional democratic government as its ultimate goal. The politically articulate groups outside the Kuomintang have always clamored for democracy, and their voice is likely to be louder once the war is over. But how to arrive at democracy? To expect that the Kuomintang will practice self-denial and give up political power to its rivals or opponents is unthinkable, and the possibility of the rival groups being able to wrest that power from the Kuomintang

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is also remote. The Communist party may have that ambition; but, obsessed with a love for things Russian, it is unlikely to grow, if it grows at all, to such a stature as to be able to dispute political power with the Kuomintang.

But it is also to the interest of the Kuomintang to keep its pledges and prepare the country for a swift transition to democracy. If the pledges are broken or remain long unfulfilled, the Party will lose the moral right to govern. The existing People's Political Council is a promising instrument for introducing more and more non-Kuomintang participation in government. If some real power is given it, and if the politically articulate elements outside the Kuomintang are given more adequate representation on it, there is no reason why the Council should not develop into something from which a future assembly of the nation may very well derive lessons.

The Kuomintang has repeatedly declared for the convening of a National Congress to adopt a constitution. It may become necessary to call the Congress very shortly after the war is over, since further to postpone the step is likely to cause the Party embarrassment. Some three-quarters of the 1,800-odd delegates were elected before the war, and their mandate has never been declared void, in spite of the passage of time. But a new general election will be necessary if the Congress is to obtain general support of the people. It is only by means of such an election that the party in power will be able to accord, by one means or another, ample representation to elements other than itself.

As a deliberative assembly, the National Congress, as provided for by the Organic Law of May 14, 1936, is too large. It was Dr. Sun Yat-sen's idea to have a large congress play the rôle of the people, much as the people in a direct democracy like some of the Swiss cantons would play it. If this idea is adhered to, as it would certainly be by the Kuomintang, there is no way of dispensing with a large congress. The question is whether, without sacrificing the large numerical size of some 1,800 members, but confining functions to those of election and recall, and of initiative and referendum, as prescribed by Dr. Sun Yat-sen, it will be possible also to have a small body of persons elected by the Congress occupy a position midway between the People's Political Council and the Supreme Committee of National Defense. The function of the People's Political Council at present is more to hold the government responsible than to exercise any positive power of governing, while that of the Supreme Committee is the actual exercise of the governing

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power. If a small body of perhaps one hundred persons can exercise general supervision over the Five Yuan and at the same time share with the Executive and Legislative Yuan in the determination of policy, it could very well prove to be an effective substitute for, and successor to, both the People's Political Council and the Supreme Committee of National Defense, which, being a Kuomintang organ, will be out of place once the country passes to the stage of constitutional government. A strict adherent to Dr. Sun Yat-sen's teachings might raise the objection that this would run counter to his idea of entrusting the political power to the people or the people's National Congress and the governing power to the government of five yuan. But to allow a complete break with the past is no way to build up a permanent institution which will last. The function continuously discharged by the Central Political Committee and the Supreme Council and Supreme Committee of National Defense, and the usefulness of these in providing a link for the five yuan, certainly deserves as much attention as literary adherence to any set of rules and political organization, which in themselves should be adaptable to the actual conditions of the day.

If, however, after General Chiang Kai-shek, another strong leader is to follow, the solution of the constitutional problem may take an entirely different turn. General Chiang, and then the leader after him, may, in the capacity of president of the Republic, take the place now held by the Supreme Committee of National Defense. As president of the Republic, such a leader could always make himself a link between the five yuan and have a large voice in their affairs. But if such should happen, there would also be a possibility of the rise of personal government by the president, with the National Congress enjoying an ephemeral political power, and with the five yuan taking strict orders from him. Such a government can hardly be justified by conditions other than those of war-time.

Perhaps to practice democracy inside the Kuomintang is of more real significance than to try vainly to establish democracy for the country at large. If during the period of reconstruction the country shall continue in the hands of the Kuomintang, as it is not unlikely to do, it is evident that it will not be democratized before the Party itself is democratized. The Central Executive Committee, in a plenary session in March, 1941, was quite unanimous that both the organization and the leadership of the Party should be put on a more popular basis—that is to say, that election from below

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should be substituted for appointment from above as a method of organization for the executive committees of the provinces and districts. If this comes true—as it has not for some twelve or thirteen years—the Kuomintang will easily secure a much broader basis of popular support, and may become more solicitous about democracy in general.

When the war is over and reconstruction begins, the problem of administrative reorganization may be of even greater urgency than it has been during the war. During the war, the separate existence of the Military Commission not only has been tolerated, but has been actually welcomed, as it insures efficiency and dispatch in military operations. But if it is to continue after the war, not only the integrity of executive power will be non-existent, but friction between the Military Commission and the Executive Yuan will be unavoidable, especially if the two organs are not in the hands of the same man. The case for amalgamation is obvious enough. The question is whether it will be easy to effect the amalgamation and bring military power within the realm of the executive.

No one will claim that Chinese administrative organization was on a rational basis before the war, and there have been, in the course of the war, surprisingly few readjustments and little reorganization of the Executive Yuan. It cannot be supposed that the present administrative set-up will meet the needs of a reconstruction period. The war is a difficult business, but it is not nearly as difficult as the work of reconstruction. The war we have been conducting for five long years is in a sense a passive endeavor. Nothing more is required than to oppose resistance to the enemy's advance. But to reconstruct a war-torn country is something more. It will be a positive endeavor requiring sound planning and economic and efficient execution. Hence the necessity for overhauling the machinery of government to suit the needs of the day. To muddle through the business of government with the existing machinery, as we have been doing during the war years, will be fatal. But how the machinery shall be reorganized is something of which no one can as yet be sure. In other words, the problem of reorganizing the machinery of government, like the more fundamental problems of democracy and leadership, will be awaiting solution when the war is over—the more because solution of it has never been attempted during the war.

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Calhoun and Federal Reinforcement of State Laws. In 1835, Southerners were alarmed and indignant at the growing practice on the part of Northern Abolitionists of mailing incendiary Abolitionist literature into the Southern slaveholding states, and were casting about for some effective method of dealing with this menace to their "peculiar institution." The memory of Nat Turner's insurrection was still fresh in many Southern minds, and the circulation of such literature as the Abolitionists were sending through the federal mails might, if the practice were not checked, result in an even more destructive uprising of the slaves. In Charleston, on July 29, the postoffice was forcibly broken into and a mass of literature found there was publicly burned. This sort of action was hardly, however, a satisfactory solution of the problem.

In his annual message to Congress in December, 1835, President Jackson recommended legislation prohibiting the circulation of such literature in the Southern states.[1] On motion of Calhoun on December 21, this portion of the message was submitted to a special committee instead of to the standing committee on Post Office and Post Roads. Calhoun gave as his reasons for wishing reference of the matter to a special committee that, in the first place, there was on the regular Post Office committee only one member from the slaveholding states, which were most concerned about this subject, and that, in the second place, the time of the regular committee would be largely consumed with other matters, so that it would not be able to devote sufficient attention to what he considered a subject "of the greatest magnitude," one "involving very delicate and momentous principles." He wished, therefore, that a special committee be appointed "that should calmly and deliberately consider the subject." Though there was some objection from other members, Calhoun had his way, and a select committee of five, of which he became chairman, was appointed.[2]

The bill reported from this committee by Calhoun on February 4, 1836,[3] did not follow at all the lines suggested by the President. Such a bill as Jackson had proposed would, insisted Calhoun, have been an un-

[1] "In leaving the care of other branches of this interesting subject [incendiary literature] to the State authorities, to whom they properly belong, it is nevertheless proper for Congress to take such measures as will prevent the Post-Office Department, which was designed to foster an amicable intercourse and correspondence between all the members of the confederation, from being used as an instrument of an opposite character. . . . I would, therefore, . . . respectfully suggest the propriety of passing such a law as will prohibit . . . the circulation in the Southern States, through the mail, of incendiary publications, intended to instigate the slaves to insurrection." *Sen. Jour.*, 24th Cong., 1st Sess., p. 31.

[2] *Cong. Globe*, 24th Cong., 1st Sess., p. 36. The other members of the committee were King of Georgia, Mangum of North Carolina, Linn of Missouri, and Davis of Massachusetts. *Sen. Jour.*, p. 46.

[3] *Sen. Jour.*, p. 139.

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constitutional abridgment of the freedom of the press; moreover, it would have failed to make clear a principle which Calhoun, as the leading champion of the state sovereignty theory, regarded as all-important, namely, that the federal government, as the agent of the states, was obligated to use its powers to reinforce such legislation as the states might deem it necessary to enact for their own protection. Accordingly, Calhoun had used his influence in the committee[4] to secure adoption by it of a bill based on what he felt to be the correct principles—principles which were expounded in a long report accompanying the bill and further elaborated by Calhoun on the floor of the Senate. As reported from the committee, the bill would punish any postmaster who received and forwarded to any state material of a sort prohibited by the state from circulating within its boundaries.[5] Thus the state was to be made the judge of what kind of material might be sent through the federal mails to its inhabitants, and the federal government was to reinforce the will of the state by forbidding its own agents to violate the wishes of the state.

The bill was debated in the Senate from time to time until June 8. During this time, the original bill was replaced by a substitute measure offered on April 30 by Senator Grundy of Tennessee; but the substitute bill retained the essential principles of the original, the chief difference being that the postmasters in the delivering, rather than those in the receiving, stations were to be held responsible.[6] During the debates, the members were in general agreement that the sending of incendiary literature into the Southern states was a practice to be condemned and stopped if possible. There could be little doubt that the bill which they were considering would furnish a means to this end. The objections raised were for the most part on the grounds of its unconstitutionality. The chief attacks upon the bill were that it would be an unwarranted exercise of power by the federal government and an abridgment of the freedom of the press. One senator, however, directly attacked Calhoun's favorite principle of the obligation of the federal government to reinforce laws passed by the states and deemed by them necessary to their safety; on April 7, Senator Davis, himself a dissenting member of the committee which had reported the bill, challenged Calhoun's principle: "He denied the right of the Government to exercise a power indirectly, which it could not exercise directly; and if there was no direct power in the Constitution he would like

[4] Calhoun's influence on this committee in securing the bill be desired seems to have been decisive. " . . . only one member of the committee concurred with Calhoun in making it. One of the members was altogether opposed and the other two preferred a bill which differed from the one advocated by the chairman." H. C. Hockett, *Constitutional History of the United States, 1826–1876* (New York, 1939), p. 179.

[5] *Senate Bills and Resolutions*, 24th Cong., 1st Sess., S. 122, Feb. 4, 1836.

[6] *Ibid.*, Apr. 30, 1836; *Sen. Jour.*, pp. 322, 399.

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to know how they would get the power of the States. . . . He asked if the State of South Carolina could give a power to the General Government not contained in the Constitution of the United States."[7]

In the report which accompanied the bill, Calhoun had made his principle perfectly clear: "The internal peace and security of the States are under the protection of the States themselves, to the entire exclusion of all authority and control on the part of Congress. It belongs to them, and not to Congress, to determine what is, or is not, calculated to disturb their peace and security; . . . In the execution of the measures which may be adopted by the States for this purpose, the powers of Congress over the mail, and of regulating commerce with foreign nations and between the States, may require coöperation on the part of the General Government; and it is bound, in conformity with the principle established, to respect the laws of the State in their exercise, and so to modify its acts as not only not to violate those of the States, but, as far as practicable, to coöperate in their execution."[8]

Thus the powers of Congress, including the commerce power, must be used to reinforce laws of the states which the latter might deem necessary for their internal peace and security. Moreover, as Calhoun made clear in his great speech in the Senate on April 12 explaining and defending his bill, this was not merely a moral but a constitutional obligation of Congress: " . . . I do not mean on the principle of *concession*. I take higher grounds. I mean under the obligation of the *constitution itself*."[9]

Calhoun's logic failed, however, to convince the majority of the Senate. On June 8, Grundy's substitute for the original bill failed of adoption,[10] and with it Calhoun's attempt to secure acceptance of his doctrine of the constitutional necessity of federal reinforcement of state laws.[11]

The Civil War destroyed forever all chance of acceptance of Calhoun's theory of the complete sovereignty of the states. Toward the end of the century, however, when many states were again finding difficulty in dealing satisfactorily through the exercise of their police power alone with a matter which they considered inimical to the welfare of their citizens, namely, the traffic in intoxicating liquor, there was an interesting revival of the doctrine of federal reinforcement of state laws. There was a demand on the part of many of the "dry" states that Congress use its commerce

[7] *Cong. Globe*, pp. 288 f.

[8] Richard K. Crallé (ed.), *Works of John C. Calhoun* (New York, 1863–64), V, 197, 199. [9] *Ibid.*, II, 527. [10] *Sen. Jour.* p. 416.

[11] Senator Niles' statement on April 13 probably expressed the view of the majority: "However he might deprecate the circulation of these mischievous publications, he was not satisfied that there was any urgent necessity for calling in the agency of this [the federal] Government." *Cong. Globe*, 24th Cong., 1st Sess., p. 301. No further effort was made to deal with the problem of incendiary literature through federal reinforcement of state laws.

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power to prevent the shipment of intoxicating liquor into states whose laws prohibited its manufacture or sale.

The advocates of federal reinforcement of state laws dealing with the liquor traffic were, however, more successful than Calhoun had been. In 1890, Congress passed the Wilson Act subjecting all intoxicating liquors transported in interstate or foreign commerce to the police power of the states upon their arrival therein, regardless of whether they remained in their original packages or not.[12] Thus Congress admitted, as Calhoun had argued, that "the powers of Congress . . . of regulating commerce with foreign nations and between the States may require coöperation on the part of the general government."[13] To be sure, the advocates of this legislation had not, as had Calhoun, insisted upon the constitutional *obligation* of Congress to act; nor had Congress itself admitted any such obligation. Nevertheless, the fact that Congress yielded to the extent of actually supporting state legislation in this manner, even though it might be only on what Calhoun had called "the principle of concession," seems to validate at least part of Calhoun's thesis. In upholding the statute the following year against charges of an unconstitutional interference with commerce and an improper delegation by Congress to the states of its commerce power, the Supreme Court pointed out that the Constitution "does not provide that interstate commerce shall be free," and that Congress had not delegated its power, but had merely exercised its own power over interstate commerce to divest certain articles of their character as commodities of interstate commerce "at an earlier period than would otherwise be the case."[14]

Some years later, Congress went further in applying the principle of federal reinforcement of state laws on the liquor traffic and in the Webb-Kenyon Act of 1913 forbade the *shipment or transportation* in interstate commerce of liquor intended for use or sale in states whose laws prohibited such use or sale.[15] Though vetoed by President Taft on the ground that it was an improper "delegation by Congress to the states of the power of regulating interstate commerce in liquors," or else an unconstitutional exercise by Congress itself of its commerce power in that it erected barriers to commerce which it had been the intention of the framers of the Constitution to prohibit,[16] the act was passed over his veto and subsequently in 1917 upheld by the Supreme Court, which again denied that there was any improper delegation of power or any unconstitutional ex-

[12] 26 *U.S. Stat. at Large*, 313. The original-package doctrine, established by Chief Justice Marshall in Brown v. Maryland in 1827, had hitherto, of course, prevented states from exercising any control over such shipments while they remained in their original wrappings. [13] Calhoun's Report, *supra*.

[14] *In re Rahrer*, 140 U.S. 555, 562.

[15] 37 *U.S. Stat. at Large*, Pt. I, pp. 699 f.

[16] *Cong. Record*, Vol. XLIX, Pt. V, pp. 4291 f.

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ercise by Congress of its commerce power.[17] Moreover, in its opinion on this occasion the Court advanced farther toward acceptance of the position which Calhoun had earlier assumed than either it or Congress had previously done. Chief Justice White, giving the opinion of the Court, said: "But notwithstanding it is not vested with supervisory power over matters of local administration, *the responsibility is upon Congress*, so far as the regulation of interstate commerce is concerned, *to remove the restriction upon the State* in dealing with imported articles of trade within its limits, which have not been mingled with the common mass of property therein, *if in its judgment the end to be secured justifies and requires such action.*"[18]

It will be recalled that at the time of the debate on Calhoun's bill the Senate was agreed that the purpose of the bill was desirable. It will be recalled also that at that time Calhoun argued that it was the responsibility of Congress, so far as the regulation of interstate commerce and of the post-office was concerned, to remove the restriction upon the states in dealing with imported incendiary literature. At that time, however, the Senate refused to accept the principle that there was any real *responsibility* resting upon Congress under the circumstances. But by 1917 the Supreme Court appeared to be accepting Calhoun's thesis that under these circumstances such a responsibility *did* rest upon Congress. The only differences between Calhoun's position in 1836 and that of the Supreme Court in 1917 were these: whereas Calhoun insisted that the decision as to whether "the end to be secured justifies and requires such action" rested with the states, the Supreme Court left that decision to Congress; and whereas Calhoun insisted that under such circumstances Congress was *constitutionally* as well as morally obligated to act, the Supreme Court did not specifically state that the responsibility upon Congress which it mentioned was a *constitutional* as well as a moral one, although such an inference might, indeed, be drawn from its language. Of course, the fact that the validity of Calhoun's theory of the complete sovereignty of the individual states had been destroyed by the Civil War made it impossible thereafter to hold that the decision as to what action Congress must take under any given set of circumstances rested with the individual states. In other respects, however, the Supreme Court by 1917 seems to have approached very closely to complete acceptance of the Calhoun thesis, if, indeed, it had not completely accepted it.

Some years later, Congress applied this same principle of federal reinforcement of state laws to prison-made goods, following closely the procedure which had earlier been followed in dealing with intoxicating liquor.

[17] Clark Distilling Co. v. Western Maryland Railway Co., 242 U.S. 311–32.

[18] Quoted by the Chief Justice from an earlier opinion in Leisy v. Hardin, 135 U.S. 123 f.; 242 U.S., 329. The italics are mine.

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In 1929, the Hawes-Cooper Act subjected such goods to the police power of the states upon their arrival therein,[19] just as the Wilson Act had done in regard to intoxicating liquor. This act was upheld by the Supreme Court in 1936 on the same grounds as those on which the Wilson Act had been sustained.[20] In 1935, the Ashurst-Sumners Act prohibited the transportation in interstate commerce of prison-made goods in the same language and under the same conditions as those applied to liquor by the Webb-Kenyon Act.[21] In the case in 1937 which upheld this act, the language of the Supreme Court concerning the responsibility of Congress was not as strong as that quoted with approval from Leisy v. Hardin by Chief Justice White in 1917. Speaking for the Court on this occasion, Chief Justice Hughes said: " . . . the Congress *may* prevent interstate transportation from being used to bring into a State articles the traffic in which the State has constitutional authority to forbid, and has forbidden, in its internal commerce. . . . The pertinent point is that where the subject of commerce is one as to which the power of the State may constitutionally be exerted by reduction or prohibition in order to prevent harmful consequences, *the Congress may, if it sees fit,* put forth its power to regulate interstate commerce so as to prevent that commerce from being used to impede the carrying out of the state policy."[22] There is here no indication of any responsibility, either constitutional or moral, resting upon Congress to pass such legislation. It is merely stated that Congress "may, if it sees fit," take such action. In other words, the Court seems to have receded somewhat from its position in 1917, when it most nearly approached Calhoun's position. Nevertheless, the fact that Congress did pass legislation in support of state legislation in connection with both liquor and prison-made goods goes far to support Calhoun's thesis that it is the responsibility of Congress to reinforce state legislation whenever the states feel that such supporting legislation is necessary to their safety and welfare.

It is true, of course, that the federal legislation respecting the transportation of liquor and prison-made goods rested upon the commerce power of Congress, whereas the bill proposed by Calhoun for controlling the transportation of incendiary literature rested upon Congress's control of the post-office and was attacked chiefly on the ground that it would constitute an abridgment of the freedom of the press. Since Calhoun's day, however, Congress has forbidden the use of the mails for the transportation of undesirable literature, and such action has been held by the Supreme Court to be no unconstitutional interference with free-

[19] 40 *U.S. Stat. at Large*, 1084. [20] Whitfield v. Ohio, 297 U.S., 431–41.
[21] 49 *U.S. Stat. at Large*, Pt. I, pp. 494 f.
[22] Kentucky Whip and Collar Co. v. Illinois Central Railroad Co., 299 U.S. 348, 351. The italics are mine.

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dom of the press.[23] Moreover, in 1940 Congress passed an act applying the Calhoun principle of federal reinforcement of state laws which was based on its control of the mails as well as upon its commerce power. This measure, entitled "an act to divest prize-fight films of their character as subjects of interstate or foreign commerce, and for other purposes," repealed an earlier act of 1912 which, employing the Jacksonian principle, had forbidden interstate transportation of prize-fight films through the mails or otherwise and had provided suitable penalties for violation.[24] Instead of this, the 1940 act merely subjected such films to the police power of the states immediately upon their arrival therein, leaving to the individual states the imposition of penalties and the problem of enforcement[25]—thus employing what Calhoun had contended was the only proper method of handling such a situation. Because of the nature of the material involved and the fact that, like incendiary Abolitionist literature, it could be most easily transported through the mail, this instance presents the closest parallel to the problem faced by the Southern states in Calhoun's day; and the ultimate solution of it was entirely in accord with Calhoun's proposal in 1836.

In conclusion, it can be said that Calhoun's position in regard to federal reinforcement of state laws has been in large measure validated by subsequent developments in that field. The more extreme points in his argument, namely, that it is the prerogative of the states to decide when such federal legislation is necessary, and that when any state so decides, Congress is *constitutionally* as well as morally obligated to pass such legislation can, of course, never hope for acceptance, since they rest upon the discredited and discarded theory of state sovereignty. Nevertheless, developments since Calhoun's day have established that Congress can, if it wishes, prevent deleterious literature (or merchandise) from passing through the mails (or in interstate commerce), and that it can, if it wishes, permit the individual states to determine what kinds of literature (or merchandise) should be denied the protection within their boundaries of the power of Congress over the mails (or over commerce). Since the Constitution has not been amended in any way affecting these powers of Congress, it is clear that Congress could in 1836 have constitutionally

[23] *Ex parte* Jackson (1878), 96 U.S. 727–37; *In re* Rapier (1892), 143 U.S. 110–35. Calhoun himself had, of course, claimed that entire prohibition of any literature from the mails, in the manner suggested by President Jackson in 1835 and applied later in the century by Congress to certain types of literature, would be an abridgment of freedom of the press. In doing so, he was influenced, however, possibly by political animosity to Jackson and certainly by his aversion to the exercise of strong powers by the central government unless it were made clear that such powers were being exercised by the federal government in its capacity as the agent of the states and at their behest.

[24] 37 *U.S. Stat. at Large*, Pt. I, pp. 240 f.

[25] 54 *U.S. Stat. at Large*, Pt. I, p. 686.

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prevented incendiary literature from passing through the mails into any state in contravention of the laws of that state. Furthermore, the developments since Calhoun's day which we have noted afford ground for believing that if any group of states should now pass laws excluding certain literature from circulation within their boundaries because they felt that such literature would be inimical to the safety or welfare of their citizens, Congress would feel some obligation to use its own powers to support and render more effective such state legislation. This, after all, is the major part of what Calhoun argued for in 1836.

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Judicial Attitudes Toward State-Federal Relations. In August, 1787, while the Convention at Philadelphia was deliberating upon the commerce clause, the delegates witnessed a demonstration of John Fitch's steamboat, propelled uncertainly against the current of the Delaware. In the development of American federalism it may seem that technology—of which Fitch's steamboat will for the moment serve as a symbol—has counted for more than what the statesmen in Independence Hall worked out on paper for the distribution of power between state and nation. This is not to bespeak for poor John Fitch a niche beside the fifty-five founders; steam would have produced its centralizing effect upon economy and government even had there been no contribution by Fitch—who was, moreover, a cantankerous anti-Federalist in politics. I mention the coincidence merely to suggest that ingenious men invent and enterprising men initiate shifts in the nation's economy, and that the institutions of federalism have to adjust themselves to the resultant thrusts and resistances in the social medium. It is only at the end of the cycle that there comes a decision by the Supreme Court holding that the state had full power to act in the premises, or that the matter belonged exclusively to Congress, or that the command of the state was enforceable until Congress broke its silence.

Of course everyone worth his salt in our business will look beyond the case to examine its economic and political context. But in centering our attention as we do upon great constitutional landmarks such as Gibbons v. Ogden and Cooley v. Board of Wardens, we may not realize how inadequate to a study of American federalism is the mere exegesis of leading cases. The adjudication of the Supreme Court is episodic; a situation may have been developing for years before men found it to their interest to litigate. For example, how is one to account for the long delay in threshing out the constitutional issues involved in state laws discriminating against the products of other states? That held bad in Ward v. Maryland in 1871 had been on the statute-book since 1852; the ordinance invalidated

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in Guy v. Baltimore in 1880 had been enacted by the city in 1858 under authority of a statute of 1827. Like instances might be multiplied. Should one conclude that the types of interstate trade discriminated against had been too trivial to support a law suit, or was it only because the Civil War had taught the country and the Court to think more spaciously, that these preferential laws appeared obnoxious to our federalism? To ignore the timing of litigation as purely adventitious is often to miss some portentous development in our mode of life and thought. The importance of chronology in the line of cases from Holden v. Hardy to West Coast Hotel Co. v. Parrish is striking but not unique.

It is familiar nowadays—what is often hinted by a long list of *amici curiae*—that when the Court passes upon the action of one state it may practically be deciding the validity of like action in many states. But in considering the significance of older cases we may never have troubled to make a survey of session laws to discover whether this statute was unique, or was a part of some cycle in legislation. Even after we have read the statute-books, we will not know the actual position unless we inquire how the law was construed and applied by the state's officers. For example, the so-called unit rule for apportioning state taxation of rolling-stock used in interstate commerce, approved by the Supreme Court in Pullman Co. v. Pennsylvania, was pure improvisation by the Pennsylvania tax authorities: the statute itself said not a word about apportionment.

In taking a great decision as a starting point, we are liable to accept the Court's analysis as inevitable, and blind ourselves to other possible ways of treating the problem. Consider how long we were imprisoned by Marshall's dictum that the power to tax involves the power to destroy. Will we ever be able to take a wholly independent view of the problem in Brown v. Maryland? One obvious aid, often overlooked, is to scan critically the judgment of the court below, especially when the case came up from a state court. Were the judges below speaking the language of parochialism, of state-rights dogmatism, or were they making a reasoned evaluation of the interests at stake? Only when we discover how the case looked before it came up can be appreciate the form into which the Supreme Court chose to cast it.

If we look for the crude stuff out of which the great cases on federal-state relations arise, we will typically find adventurers and leaders with practical objectives which they pursue with only incidental concern for the "true meaning and intent" of the Constitution. Take, as an example, the following draft of a petition to the New Jersey legislature, written by John Stevens of Hoboken, a contemporary of Fulton and brother-in-law of Fulton's partner Livingston. The time is about 1830, and the object is to secure authority to build the first railroad across New Jersey, from opposite New York to the Delaware: " . . . if this golden opportunity is

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suffered to slip through our fingers [wrote Stevens]—If Congress should be permitted to interfere with us—If under colour of 'establishing Post Roads' the U. S. should undertake to lay out straight roads from City to City—this brilliant prospect would vanish from before us like a 'Mid Summers night Dream' [sic] . . . let us, in vulgar phrase, 'make hay while the sun shines.' But should Congress let us alone—Still I perceive we are in imminent danger of becoming a . . . prey to a host of speculating gentlemen from Phila. & New York—men who beset our Legislature—Incorporated companies must rise up like mushrooms in all quarters, and gull the good citizens of this State out of their hardly acquired earnings—Let us for once act with our eyes open—Let us not cast away from us wantonly so precious a jewel—Let us retain the profits of the railroad system in our own hands."

This is typical of the mixed motives—business acumen rationalized as zeal for the public good, an urge for self-realization, social vision, and patriotism which may be local or national as dictated by self-interest—with which purposeful men initiate changes to which the federal system must respond. Presently business rivals were appealing to Congress in the language of high-toned Federalism to give them a charter which would override the monopoly Stevens had procured from the legislature of New Jersey. Lawyers are called in to conduct the legal campaigns necessary to the achievement of such purposes as these, and presently battle is joined over questions of commerce power, impairment of contracts, public purpose, intergovernmental immunity, judicial power, due process of law. We should be astute to look beyond these several controversies to discern their relation to movements in economic, and hence also in political, organization. A case need not involve any question of constitutional law to have important implications for the federal system. Was it *intra vires* for a small railroad in one state to lease its entire property to another corporation, thereby facilitating the formation of a single interstate trunk line? Was it the duty of a carrier to provide equal facilities to several express companies, or might a single express system be fostered? These common law issues were before the Supreme Court in 1886, contemporaneously with the great constitutional question in Wabash Railway Co. v. Illinois, and through them all one can see that the Justices were concerned, not with abstractions, but with very practical questions as to what sort of railroad system this country should have, and in what respects it should be controlled by the one sovereign or the other. If we would push our inquiries into such unworked sources as corporate records and reports, and the opinions rendered by counsel as to the legal practicability of business objectives, we might learn much of the impulses which operated behind litigation.

So I venture to suggest that we ought to study the judiciary, and es-

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pecially the Supreme Court, more imaginatively, to make a mightier effort to articulate litigation with the elusive data of social and economic development. We need to know much more of the history of major railroad systems—one recalls Professor Summers' excellent study of *The Baltimore and Ohio in the Civil War*—much more of the history of corporate practices, of the rise of nation-wide marketing, of the interaction of judicial decision, state taxation, and business practice. When a legislature laid a tax, was it merely asking that interstate commerce pay its way, or was it seeking to cast local burdens on the inhabitants of other states? If the tax was invalidated by the Court, what happened then—did the state contrive to perpetuate the evil while altering the form? Sometimes one suspects that neither judges nor legislators realized the practical consequences of their acts. For example, the bewilderment of the Supreme Court on March 3, 1873, when it invalidated the Pennsylvania tax on interstate freight while sustaining the tax on gross receipts, was matched by the confusion of the Pennsylvania legislature eighteen days later when it repealed the tax held good and deliberately retained the one invalidated. We have been too prone to be satisfied with the obvious materials and to repeat the talk of the Court, while we need to develop more resourcefulness in exploring hidden areas and opening new vistas to understanding. Need it be said that this is not a plea for more economic interpretation based on *a priori* assumptions congenial to the commentator?

It has been the task of the Supreme Court to make the federal system viable. I used to think it a godsend that the records of the Constitutional Convention were not available for citation in Marshall's Court, supposing that the thoughts of the founders must have been more provincial than those of the great Chief. Professor Abel has recently shown these suspicions to be unjust: under his discriminating interrogatory, the framers speak out with clear voice to profess exactly those broad principles which an expanding society needed. None the less, it was Marshall and his brethren who gave meaning to the charter.

As Marshall conceived the problem of state-federal relations, it was a matter of rendering to Caesar the things that are Caesar's. In McCulloch v. Maryland, he developed an analysis which seemed to leave the state all that belonged to it, while placing wholly beyond its reach all emanations from the authority of the Union. There were to be no clashing sovereignties, no interfering powers. Marshall had a black and white mind. His brother Johnson, one of the few contemporaries who left a distinct imprint on the record of the Court, later insisted that the legislation of the two sovereigns must meet and blend at points, making separation difficult; for such cases he counseled "a frank and candid coöperation for the general good." How much statesmanship lay behind Johnson's remark is an interesting subject for speculation.

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It was the work of Taney's Court, not without many individual differences, to arrive at more elastic solutions for the emerging problems of federalism. There were matters of commerce, of banking, of expanding corporate activity, with which Congress was as yet unconcerned. Taney was prepared to sustain the government which first reached the spot—which abhorrence of a political vacuum will explain why there is almost as much of Taney as of Marshall in the jurisprudence of the Supreme Court today.

We shift our position to 1887—the centennial of the Constitution, the year of the first Interstate Commerce Act, almost the close of Waite's chief justiceship. A crowd of controversies born of the post-war expansion of commerce were pressing for decision. The commerce clause was then the great instrument for determining federal-state relations, and the Court was busy establishing the lines over new and old ground. "A great number and variety of cases involving the commercial powers of Congress have been brought to the attention of this court during the past 15 years," wrote Bradley J. in 1888, "which have frequently made it necessary to re-examine the whole subject with care . . . and . . . to modify in some degree certain dicta and decisions." A digest of the cases decided between 1886 and 1888 would amount to an entire code of federalism. The Fourteenth Amendment had not yet been put to work, but the possibility of employing it against unwise state action was evidently being entertained. It was a tough-minded Court, alive to its responsibilities. In the summer of 1890, Justice Field, broken in health, had gone to Aix to be cured. Writing back to his brother Bradley, he said: "I have had a rough time but now believe I shall see you again in the flesh—and be able to fight with you for the establishment of sound constitutional doctrines. . . . You and I, my dear Judge, have got a great work to do on the Bench—we have got to preserve, strengthen, and so fortify as to be impregnable the advanced grounds of constitutional law, on matters of commerce—and equality of rights . . . so that all that has been accomplished in either direction since the Civil war may be transmitted unimpaired to the guardianship of our successors."

To Justice Field, precisely as to Marshall, the problem had seemed one of absolute principles. Doing interstate business was a federal right which no state might tax. The privilege of incorporation came from the state and might be taxed as arbitrarily as the legislature pleased. By the end of Fuller's chief justiceship in 1910, it had become evident that one absolute could not be allowed to devour the other. It was a problem of relativity and accommodation, not of syllogisms; the Court must look beyond forms to substance, and think in terms of economics. This, of course, was the import of Western Union v. Kansas. The year 1910 was also the date of the White Slave Act, typical of federal regulations of

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commerce for purposes of police. How far this national power could be used to meet national needs was not yet clear.

Today, as we face a moment of supreme urgency with a new Court, certain judicial attitudes are marked. First, the supremacy of national authority, in respect of commerce and doubtless of all other powers. Here the Court draws inspiration from Marshall. Yet in respect of state taxation, and of regulation until Congress unequivocally occupies the field, the Court acts in the spirit of Taney. In the social conditions of yesterday, a sales tax became imperative, and constitutional doctrine was adjusted accordingly. The Court today needs no reminder that our government is composed of many members and that the supreme judiciary should allow scope to legislative and administrative action on all levels. Like Johnson J. in Gibbons v. Ogden, it sees that national and local regulations may meet and blend at points, and that there should be "frank and candid coöperation for the general good." Consider its handling of Edwards v. California, testing the validity of a state law excluding indigents. When I asked the attorney-general of California for a copy of his brief, I was told his office had never heard of the case; it had been appealed from a superior court with only a district attorney to defend a type of statute recently adopted by many states. It was therefore in character that before striking it down the Court ordered reargument, with a request for advice as to the actual judicial and administrative interpretation of the law.

While questions of war power have yet to emerge, glimmerings from other cases disclose a belief that the national government must be the sole authority in matters involving foreign relations, while the values implicit in the bill of rights will be judiciously balanced against the supreme imperative that this nation must be able to bear its part in establishing a world wherein human decency shall be universally secured. In time of foreign peril as of domestic maladjustment, we are one people; our federalism is an elastic system which can take on varied forms in response to new demands.

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Erie v. Tompkins and the Relationship Between Federal and State Courts. Erie v. Tompkins[1] evidences decentralizing trends in our federal

[1] Decided April 25, 1938, and reported in 304 U.S. 64; 58 Sup. Ct. 817; 82 Law Ed. 1188. The prevailing opinion was written by the late distinguished member of the Supreme Court, Louis D. Brandeis. A dissenting opinion, in which he was joined by Mr. Justice McReynolds, was written by Mr. Justice Butler. Mr. Justice Reed concurred in a separate opinion, and Mr. Justice Cardozo took no part in either the consideration or decision of the case.

Tompkins, a citizen of Pennsylvania, sued the Erie Railroad for damages sustained by him when he was struck by something projecting from a passing train. The

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system in two different ways—one fairly obvious and relatively orthodox; the other neither obvious nor orthodox, but probably the more significant. The first aspect may be touched upon very briefly and the ramifications of the second explored more fully.

The obvious side of Erie v. Tompkins lies in its rejection of a common law of the United States available for application by the federal courts in diversity cases. This conception was given expression by Story in Swift v. Tyson,[2] and has been followed in many, if not most, of the succeeding cases building upon and expanding Story's doctrine.

The Erie v. Tompkins reversal of this position is relatively orthodox decentralization, because a national rule system in a particular field of decision is simply discarded in favor of multiple state rule systems. It is true that Congress has never attempted to implement this particular rule system by statute, but it is quite possible to regard any national rule system as exposed to the assertion of a corresponding congressional legislative power. Hence one may explain the Erie v. Tompkins rejection of a federal common law as a measure guarding against this contingency.

As such, it does not differ fundamentally from other shifts in the distribution of governmental power between central and local governments. It is true, however, that it does not have all of the usual effects of a decentralizing move on this plane. By this I mean that the elimination of a national rule to be applied in diversity cases does not, as a practical matter, involve any sacrifice of uniform standards. The federal courts have not undertaken to impose the rules applied by them in diversity cases upon the state courts dealing with the same subject-matter.[3] And since the mere force of federal example has not sufficed to reduce the area of disagreement among the forty-eight states, the federal jurisdiction itself has amounted to a forty-ninth legal tongue in our land of many legal tongues.

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accident occurred in Pennsylvania, and liability, therefore, would normally be determined by the law of Pennsylvania. But suit was brought in New York because the defendant was a corporation organized under the laws of that state, and, in the federal district court for the Southern district of New York, because of the diversity of citizenship. The principal question before the Court was the extent to which it was bound to apply rules of law laid down by the Pennsylvania state courts in analogous situations. On the authority of Swift v. Tyson, decided by the Supreme Court in 1842, the federal trial court held, and the Circuit Court of Appeals affirmed, that it was not bound to follow the state rule. The Supreme Court reversed the lower courts on the ground that Swift v. Tyson must be overruled. Since, in so holding, the freedom of judicial decision by federal courts was restricted, a decentralizing tendency of some sort must be attributed to Erie v. Tompkins.

[2] 16 Pet. 1; 10 Law ed. 865.

[3] In dealing with its own citizens, each state is as much at liberty to develop its own common law as if there were no federal jurisdiction in cases of diversity of citizenship.

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It is also perhaps worth noting that Erie v. Tompkins is not what may be called "politically" decentralizing. By this I mean that the concession to state authority involved does not substitute state officials for national officials in any administrative capacity. There is no net reduction in the citizen's contacts with officers of the national government, and hence there is no reason to expect any change in his habits of obedience. In order to get a decentralizing move having this last potential, we should have to adopt one of the many proposals to turn diversity cases over to state *courts* exclusively as well as to state *law*.[4]

Taking all of these considerations together, I think we may say that the elimination of a common law of the United States as a factor in the decision of these cases is relatively innocuous, as well as orthodox, decentralization. The same thing cannot be said, however, of the second aspect of Erie v. Tompkins. What I have in mind here is the implied rejection of so much of Story's opinion in Swift v. Tyson as goes to the right of federal judges to correct state judges on the latter's interpretation of state law. The present Supreme Court does not distinguish between this kind of federal power and the kind of federal power which flows from the assumed existence of a general law of the United States which Congress might amend at will. Both are supposed to represent the authority of the federal government, and are, according to Brandeis,[5] equally unconstitutional when employed in diversity cases.

Now in analyzing this position we need not spend much time on Section 34 of the Judiciary Act of 1789. Story was clearly wrong in holding that the expression "laws of the several states" was intended to exclude state judicial decisions. The plural form "laws" was used as a substitute for separate references to *the* law in each of the several states.[6] We may take it for granted, then, that it is to *the* law of a state that Congress refers the federal courts in all these cases; and we may also go along with Brandeis so far as to say that any other disposition of this jurisdiction by Congress would be unconstitutional. But this still leaves without adequate explanation his further assumption that no judicial discretion or independent judgment may be employed by federal courts in the interpretation of the state law.

[4] The elimination of federal courts as well as federal rules would have meant in the instant case that the courts of New York would have been called on to apply the law of Pennsylvania—a simple conflict-of-laws situation.

[5] Technically, it is quite proper to refer to the opinion of the Court and the opinion of Mr. Justice Brandeis interchangeably. Mr. Justice Reed was the only member of the majority to place himself on record with a word of caution. It is, however, more than likely that the inarticulate four followed Brandeis with some uneasiness.

[6] The significant reference here is, of course, Charles Warren's article, "New Light on the History of the Federal Judiciary Act of 1789," *Harvard Law Review*, Vol. 37, pp. 81–88.

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He clearly means to say that a current decision by a state court of last resort which is on "all fours" with the situation presenting itself in the federal court must not be disregarded. But this is really a highly ambiguous proposition which the facts in Erie v. Tompkins do not help us to resolve. The facts were that the lower federal court had refused to consider the law of Pennsylvania at all, on the ground that there was a federal rule covering the situation. This would have been error on the narrower ground already discussed, but it does not help us much in determining how much liberty the lower court might have taken in arriving at the law of Pennsylvania without finding itself in error on the wider ground which the case apparently stands for. In other words, what kind of a precedent is the latest decision of a state court supposed to furnish federal courts? Or, if the state decision is not a precedent, what is it?

Assuming for the moment that we are dealing with a common-law theory of precedent, there would seem to be no way of achieving anything like the certainty of application which Brandeis contemplates for state decisions short of recognizing them as what are sometimes called "absolutely binding" precedents. Now I have no desire to become hopelessly mired in the subtleties of *stare decisis* in order to discover what absolutely binding precedents are in the abstract. Precedents, no doubt, enjoy different degrees of authority for which there are a number of seductively simple formulæ. As a practical matter, however, I think it may be said that an absolutely binding precedent differs from an ordinary precedent solely in the fact that it is laid down by a court to which appeal lies from the court in which the precedent is cited as authority. The flexibility of treatment to which an ordinary precedent is always subject is cut down through the institution of appeal. By this means the precedent-making court may correct the precedent-following court on the very facts which precipitated the controversy.

We may say, if we like, that the precedent becomes absolutely binding in the eyes of the lower court by virtue of the law of anticipated reactions.[7] But, regardless of the explanation offered, there are certainly no examples in American jurisprudence of absolutely binding precedents except as between superior and inferior courts related as such by the institution of appeal. Since federal courts are never so subordinated to state courts, we can afford to be doubtful whether the bare concept of absolutely binding precedent will help to attain the end of certainty which the supreme court has in mind in this situation.[8] Once we remove the avail-

[7] The phrase is Carl Friedrich's. See his *Constitutional Government and Politics* (New York, 1937), p. 16.

[8] Of course, all this is assuming that a relevant state rule *has been* announced by the state court of last resort. But the law may be in a much more inchoate condition than this when proceedings are instituted in the federal courts. What are the latter

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ability of appeal from the horizon of common-law judges, all the familiar devices by means of which new law is distilled from nominally controlling old law may be counted on to assert themselves. Precedents do not need to be overruled for this purpose; they need only be "distinguished." Thus, while I do not doubt that lower federal courts may be held pretty close to the Supreme Court's interpretation of state common law, I do not see how the Supreme Court itself can be expected to preserve more than a formal, and hence deceptive, correspondence with the state law as interpreted by state courts.

But it may be maintained that we are not dealing with state decisions as precedents on the common-law pattern at all. Perhaps the law of the state is not something which has to be interpreted or declared by the federal courts in the same manner as it is found by state courts. There is much in the opinion of Brandeis, and even more in the character of his citations, to suggest that this is the underlying thought of the Court in Erie v. Tompkins. Thus, the Court is apparently joining issue with Story on the only two general propositions in Swift v. Tyson which would seem to be fundamentally sound.

The first of these propositions (or perhaps we would better call it a premise, because Story hardly regards it as necessary to affirm the point) is that state law is not foreign law in federal courts. The second proposition (and this Story *does* expressly affirm) is that state decisions do not make the law of the state—they merely declare it.

Now the majority in Erie v. Tompkins apparently hold the second proposition in more active contempt than the first. It is this proposition that John Chipman Gray singled out for incisive criticism in his classic *Nature and Sources of the Law*;[9] and it is this proposition that Holmes, among other noted jurists of bench and bar, deprecated on the same grounds.[10]

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to do if the state supreme court arrives at a different version of state law than the federal trial court after the trial court has acted? And what are the federal courts to do if the most recent state judgments are those of inferior state courts? The Supreme Court is willing to admit the obligation of federal courts to adjust themselves *instanter* to what a state court of last resort does—even if the decision in question is announced subsequent to federal trial but before the federal case is finally disposed of on appeal. Vandenbark v. Owens-Illinois Glass Co., 61 Sup. Ct. 347. But what the obligation of the federal courts may be with respect to the interpretations of state law by inferior state tribunals is not clear. As Professor T. R. Powell has put it, "Are the federal courts to take their state law from a justice of the peace?"

[9] 1st ed., New York, 1909.

[10] Brandeis' documentation is, as usual, beautifully complete. Both the supporters and the opponents of his position are neatly inventoried via foot-notes to the opinion. Without disparaging the quality of the commentary on Erie v. Tompkins which has already appeared, it may be said that the earlier literature assayed

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But, before asking ourselves how much there may be in this type of criticism, something ought to be said of the closely related, if more subdued, attack on the first proposition. Of course, the idea that state law is foreign in federal courts is suggested by the fact that the principles of conflict of laws are applied by state courts when called on to apply the law of other states. Under these circumstances, it is no doubt true that the decisions in another state do not lend themselves to the same degree of manipulation as local decisions. Whether this is because the law of another state presents a question of fact for local courts or for some other reason, we need not inquire. After all, the relation of courts in state A to courts in state B can hardly be compared with the relationship between state and federal courts. At least it must be recognized that up to the present attempts to carry out any such analogy are completely out of accord with both the theory and practice of this relationship.

It has never been suggested, so far as I know, that the obligation of state courts to interpret and enforce the constitution of the United States is any different from the obligation of federal courts. And, since 1816,[11] it has never been suggested that state decisions on constitutional questions are not to be corrected by the federal Supreme Court in substantially the same way that decisions of the lower federal courts are corrected. Moreover, it has been almost equally well established that state courts are appropriate tribunals for the interpretation and enforcement of federal statutes when the occasion arises. In our early days, as is well known, Congress treated the state courts as substitutes for the federal courts in the exercise of much Article III jurisdiction. And I should say that the present tendency to concentrate federal business in federal courts may still be described as a matter of convenience rather than of principle.[12]

As for the converse situation of state law in federal courts, the occasions are so frequent that a federal district judge who disclaimed knowledge of the law of his state would be regarded as vitally deficient in professional qualifications. Certainly a large part of the jurisdiction conferred on federal courts in the Judicial Code would be incapable of exercise without constant reference to and interpretation of state law. And federal courts have always, I think, had no hesitation in construing such law quite independently of state courts.

It is true that there is a tendency to defer the exercise of federal jurisdiction designed to test the validity of state police legislation until a state court of last resort has defined the challenged statute.[13] But this is really

by Brandeis had already explored the various facets of the problem to which the former adverts.

[11] Martin v. Hunter's Lessee, 1 Wheat. 304.

[12] Cf. Second Employers' Liability Cases (1912), 223, U.S. 1.

[13] Injunctive relief against the enforcement of a state law will be granted by federal courts only with great caution.

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a different story. As I shall point out later, it is natural for federal courts to adopt an entirely different attitude toward the exercise of essentially administrative functions by state courts in which the latter are acting as agents of the state government.[14] I am talking now about the state law upon which private rights are founded, and not about state police regulations which may violate private rights. My immediate point may be boiled down to the assertion that federal courts have always been credited with sufficient familiarity with state common law to warrant them in approaching that law with the same professional assurance as state courts. And this point really need not be labored at great length—particularly with respect to the federal jurisdiction in diversity cases. It should be enough to recall that one of the plans seriously considered for taking care of these cases was to have federal courts concerned at only the appellate level. In other words, the state courts were to have all original jurisdiction—naturally applying their own law; the federal courts were to review their determinations—as naturally applying the same law. This proposal was dropped, but not because anyone regarded the authoritative interpretation of state law by federal courts as at all incongruous.

Standing alone, therefore, I should conclude that the idea that state law is foreign law for federal courts is not a very persuasive basis for Erie v. Tompkins. In fact, it is unlikely that Swift v. Tyson would have been overruled had the problem been so baldly stated. We need to bring in the neo-Austinian version of the judicial function supplied by Gray in order to see why the Supreme Court has come to regard federal manipulation of state decisions as fundamentally bad. For purposes of the present question, Gray is supposed to have demonstrated that judges make the law instead of simply declaring it. Moreover, it was Story's bad professional fortune to have his somewhat fumbling remarks in Swift v. Tyson singled out by Gray as an egregious example of the contrary doctrine. Thus, many constitutional lawyers have been persuaded that the unfortunate results of Swift v. Tyson could have been avoided had Gray's realistic approach to the judicial function been adopted by the Supreme Court on that occasion.

As a matter of fact, however, Gray's doctrine of judicial lawmaking

[14] The conclusiveness of state court construction of such state legislation is a reasonable principle because the legislation is envisaged by the federal Constitution as governmental regulation which may or may not be legal. In other words, courts approach an exercise of police power, not as a statement of law, but as an exercise of authority which may or may not be in accordance with law. State court construction of local statutes under such circumstances is, therefore, not subject to federal correction, because it is not a question of law which the state court has decided. It would be as inapposite here for the federal courts to "correct" the state courts as it would be for them to correct the state legislatures or executives.

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is not simply a "within-the-gaps" theory. He is bent on establishing the self-sufficiency of the judicial process for lawmaking to the exclusion of the legislative process. This means that *interpretation* of any preëxisting generalization must be emphasized as *the* efficient instrument of lawmaking. It means also that previous judicial decisions (as a form of generalization) must be denied the quality of law—at least from the viewpoint of a court asked to apply them in a subsequent case.

Thus it is obvious that Gray could have been used quite as effectively to support federal courts in playing fast and loose with state decisions as he was used to support the contrary doctrine. In other words, what Story actually did in Swift v. Tyson is in perfect accord with Gray's doctrine that precedents are only sources of law. What Gray would have had him do, on the contrary, is something which, according to that distinguished scholar, courts never do, i.e., merely reflect or declare the law established in a precedent laid down by another court. Curiously enough, therefore, Erie v. Tompkins presents the droll spectacle of the Supreme Court renouncing for itself a theory of judicial decision which it ascribes to state courts on grounds of general juristic doctrine. Or, if we prefer to credit the Supreme Court with consistency in its definition of judicial function, the Court stands self-convicted of not performing a judicial function when it decides cases arising under state law.

This is alarming enough, to be sure, but it is still not so disturbing as the conclusion to which we must come if the Court's definition of judicial function is taken in conjunction with its assertion that the decision in Swift v. Tyson was unconstitutional. If the Supreme Court's interpretation of the Constitution can be unconstitutional, certainly the Court cannot have been exercising the judicial function of making the law when it interpreted the Constitution. Poor Story might well complain that he is being damned in one breath for failing to recognize that judicial decisions make law and in the next breath damned for breaking the law in his own judicial decision.

The little excursion into legal realism which the Court has permitted itself in the instant case may suggest to some that the results to be expected may not be altogether happy. Perhaps traditional ideas of the nature of law are no more absurd—at least as methodological devices—than the newer ideas which, as the late Justice Cardozo once demonstrated, usually issue in a denial that there is any law at all, but only a mass of isolated judgments.[15] Of course I am not asserting that the present Supreme Court has deliberately and consciously adopted any such iconoclastic position. But the Court certainly does seem to be carrying on a mild flirtation with certain "enlightened," but ill-digested, ideas about the nature of the institution it serves.

To come back, however, to the problem of centralization v. decentral-

[15] *The Nature of the Judicial Process* (New Haven, 1921), p. 126.

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ization in the light of the foregoing remarks: Apart from the very mild decentralization involved in securing acceptance of state-created rules in federal courts, is any decentralizing effect to be attributed to the theory of law under which this result is to be accomplished? I think there is. When we assign a positive lawmaking quality to judicial decision, we also relate judicial decision to those positive acts of governmental agents which, under the division-of-power system, are ascribed to federal and state governments respectively. In other words, courts, like legislatures and executives, must be assigned to one or the other of these governmental hierarchies.

The traditional conception of judicial function that courts declare the law *about* government rather than being themselves agencies *of* government has operated to place both federal and state courts above the governmental distribution of power. Our courts deal with one another's opinions as efforts to state the law; they do not regard any judicial opinion as in itself either a violation of the law being administered or an illegal encroachment on a sphere of law prohibited to the court making it. In short the unity of our courts has always contrasted sharply with the disunity of other political agencies. In a very real sense, judicial organization transcends the lines of political cleavage established between the governments or governmental agencies of the country. And this feature of judicial organization has, I believe, contributed very materially to the success of our federal experiment.

The assumption made by Brandeis that an exercise of discretion by federal courts in the statement of local law would be equivalent to an exercise of federal congressional power in the same field constitutes an indirect blow to this conception. So, too, does his assumption that state decisions are in all respects like statutes in their expression of a separate governmental will of the state.

Fundamentally, I suppose it may be said that the two assumptions are equally decentralizing, in that they tend to deprive our constitutional system of a source of national unity at the judicial level. But the second opens up a kind of centralizing tendency as well, because, if decisions of the state are like statutes of the state, it would seem to follow that constitutional limitations on the exercise of state police power may very well be applied to state decisions.

In this connection, we may recall the famous municipal bond cases in which the Supreme Court protected bondholders against state decisions invalidating the bonds on the ground that these decisions impaired the obligation of contracts.[16] The state courts had, of course, reversed themselves in the interval between the purchase of the bonds and their due date.

[16] The principal reference is to Gelpcke v. Dubuque (1864), 1 Wall. 175.

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I am aware that the Supreme Court has since explained these bond cases as examples of the freedom of federal courts to disregard state decisions which do not properly state the law.[17] Thus, in order to avoid an admission that changes in state decisions operate as police-power restraints on vested rights, the Court has only recently extended the Swift v. Tyson doctrine further than Story did. For Story did not, as we know, claim any latitude for federal courts in the matter of state court constructions of *statutes*.

It is not feasible here to go into this fascinating chapter of judicial squirming in the grip of opposing theories of law. I do suggest, however, that Erie v. Tompkins seems to open the door to a renewal of this struggle. Why, it may be asked, if it is now established that state judicial decisions *are* laws, should not the federal constitution be construed to prohibit the state courts from developing their common law in such a way as to defeat the expectations of creditors? No doubt the wording of the contracts clause may still be relied on to avoid a decision on the merits of this question, but certainly the due process clause would seem now to have been given a potential coverage not anticipated by the framers of that clause. To conclude on this point, the positive conception of law as applied to state judicial action, combined with an all too idealistic conception of law at the national constitutional level, could easily put the law of property in permanent "hock" to vested interests of all kinds.

It would be a mistake to close this paper without indicating that I am mindful of the discrimination which has resulted from the application of different rules by the federal courts from those applied by state courts. A Black and White Taxi case, for example, certainly gives us something to worry about. And I do not suggest that all possibilities for divergence between the rules adopted by federal courts and those adopted by state courts would be eliminated if only the former would drop the common law of the United States idea. It is true that the result in the Black and White case itself could hardly have been arrived at without this concept. Here, a "settled course" of Kentucky decisions, contrary to the federal rule, was admitted by all parties. Nevertheless, it would be futile to contemplate an independent power in the federal courts to declare even the *state* law, as other than a symbol of diversity. And I do not defend this viewpoint.

My argument is, first, that Erie v. Tompkins will not cure the situation. If we are really to achieve uniformity based on state action, the only satisfactory way is to relieve federal courts from all jurisdiction in the premises. If, on the other hand, we want to get uniformity based on federal action, we ought to adopt the more far-reaching expedient of allowing an

[17] Through Taft, C. J., in Tidal Oil Company v. Flanagan (1924), 263 U.S. 444.

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appeal to the federal Supreme Court from a decision of the highest court in the state, wherever the latter fails to follow a precedent established by the former. This would, of course, mean that the general course of state judicial decisions in the development of all private law would be subject to surveillance by federal judges. I realize that such a proposal stands slight chance of prevailing at this date. But it is at least worth mentioning for the benefit of those who believe that Erie v. Tompkins, despite its shaky theoretical foundations, is the only way to end the present conflict of laws while retaining federal jurisdiction.

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Executive Responsibility to Congress via Concurrent Resolution. A clause reserving to Congress the right to terminate by concurrent resolution (which has not for over a century and a quarter been submitted for presidential approval) powers delegated to the President or a department head appears in so many acts of the Seventy-seventh Congress that further consideration of its political and constitutional aspects seems appropriate.[1] If its constitutionality is established, this clause enables a majority of both houses, when dissatisfied with executive conduct of any of these delegated powers, to terminate them. Leaders of the present administration, in Congress and in the executive branch, are aware of this possibility. Supporting the measure to extend the draft period, its author, Senator Elbert Thomas, said: "Broad authority is conferred by the measure, but that authority is expressly subject to revocation at any time by concurrent resolution of the Congress."[2]

Since the exercise of powers delegated in the "Lend-Lease," Emergency Price Control, most titles in the first and second War Powers, and several other acts[3] is subject to termination by concurrent resolution, the Ameri-

[1] See this REVIEW, Oct., 1941, pp. 886–889, and Apr., 1942, p. 301, for previous comment.

[2] *Cong. Rec.*, July 30, 1941, p. 6580. In a letter to the writer, Dr. Floyd M. Riddick says that "several departmental drafts submitted to Congress for enactment contained clauses providing for termination of law by use of concurrent resolution (for example, the Second War Powers Act and the Acquisition of Property Bill)."

[3] Powers granted in specified titles or in entire acts are subject to termination by concurrent resolution in *Public Laws* of the 77th Congress as follows:

No. 11, sec. 3 (c). March 11, 1941. The "Lend-Lease" Act.
114. June 21, 1941. Presumably, since "until otherwise ordered by the President or Congress."
213. Aug. 18, 1941. Service Extension Act.
354. Dec. 18, 1941. First War Powers Act.
403. Jan. 20, 1942. Daylight saving.
413. Jan. 26, 1942. Amends sec. 606, Communications Act of 1934.
421. Jan. 30, 1942. Emergency Price Control Act.

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can executive's relation to Congress in the management of the war may become, if it is not already, similar to that of the British cabinet's relation to the House of Commons, to the extent that its exercise of powers may be ended at any time by an adverse vote. Conceivably, this relationship may be tested if there arises widespread popular dissatisfaction with executive direction of the war effort. Perhaps the only reason it has not yet been tested is the tendency of preponderant popular support to swing to the President whenever the two branches disagree on military and fiscal policies. It may be surmised, however, that some of the current uncertainty and confusion in administering war-time legislation arises from a realization by executive officers that a majority in Congress retains the right, without presidential approval, to withdraw the delegated powers at any time.

Congress did not establish this potentially significant check in one abrupt step. In the first two laws containing a concurrent-resolution clause, it did not reserve a right to terminate; instead, the Executive was required to submit plans which would go into effect after the lapse of a specified period unless in the meantime a concurrent resolution were passed declaring them unsatisfactory. This was the procedure under which powers to reorganize the executive and administrative agencies were granted to President Hoover in 1932[4] and President Roosevelt in 1939.[5] Then came the Neutrality Act in 1939, whose provisions were to go into effect after a presidential proclamation. It was to be issued "whenever the President, or the Congress by concurrent resolution, shall find that

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450. Feb. 10, 1942. Overtime for certain employees ("unless the Congress shall otherwise provide").
482. Mar. 6, 1942. Amends Merchant Marine Act of 1936. (But No. 523, April 11, amending same act, "or until such earlier date as the President may designate.")
507. Mar. 27, 1942. Second War Powers Act.
535. Apr. 29, 1942. Flying hours of air pilots.
580. June 5, 1942. Sundry military establishment matters.
603. June 11, 1942. Promotion of small business.
610. June 16, 1942. Certain emergency laws relating to the merchant marine extended.
638. June 30, 1942. Authorizing the control of the exportation of certain commodities.
643. July 2, 1942. Amending authorization to requisition certain articles and materials.

[Dr. Floyd M. Riddick has helped in preparing this list.]

[4] *Public Law* 212 (72 Cong.), Part II, Title IV, sec. 407, June 30, 1932.

[5] *Public Law* 19 (76 Cong.), Title I, Pt. 1, sec. 5 (a) and pt. 2 entire, the latter prescribing in detail the form a concurrent resolution pursuant to the act shall take "as an exercise of the rule-making power of the Senate and the House of Representatives, respectively. . . . "

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there exists a state of war between foreign states . . . ."[6] Next, the Attorney-General was obligated in the Alien Registration Act of 1940 to deport immediately any alien whose deportation had been suspended more than six months if "the two Houses pass a concurrent resolution stating in substance that the Congress does not favor the suspension of such deportation."[7]

Facing the necessity of delegating important powers to the executive, the Seventy-seventh Congress took these imperfect precedents and developed the practice of delegating powers for defense and for the nation's war effort, with the proviso that they shall terminate either six months after the end of the war, or at a date specified in the act, or (in addition to one of the foregoing) "until such earlier time as the Congress by concurrent resolution or the President may designate."[8]

At first glance, these clauses may seem unconstitutional, since the Constitution requires that "every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States . . . ";[9] but there is a long-established practice against submitting concurrent resolutions for presidential approval.[10] Even so, the custom might be overturned, when such resolutions are used to terminate laws, if there were not weighty reasons for its continuance.

First, the laws containing this clause were approved by the President. A presidential statement pointing to "the constitutional question involved in the passage of a concurrent resolution, which is only an expression of congressional sentiment," was read in the course of congressional debates,[11] but the President has not vetoed any of the measures in which Congress retained the right to terminate a grant of powers. Even more persuasive is the fact that the Administration's leaders, beginning with Senator Elbert Thomas in the Service Extension Act of 1941,[12] reported out of their committees bills with the concurrent-resolution clause already incorporated. Opponents are thus deprived of an opportunity to show their greater zeal in resisting executive usurpation, and their objections to granting more powers to the President are answered by pointing to the check which Congress holds on the grant.

[6] *Public Res.* 54 (76 Cong.), Nov. 4, 1939. Professor J. H. Leek called the writer's attention to this use of the concurrent resolution.

[7] *Public Law* 670 (76 Cong.), June 28, 1940. Title II, sec. 20 (c).

[8] *Public Law* 354 (77 Cong.), Dec. 18, 1941. Title IV, sec. 401.

[9] Art. I, sec. 7.

[10] A. C. Hinds, *Precedents of the House of Representatives*, IV, sec. 3483.

[11] 84 *Cong. Rec.*, 2479, Mar. 8, 1939. Entire letter in 83 *ibid.*, 4487.

[12] *Public Law* 213., Aug. 18, 1941. Senator Thomas' remarks, *Cong. Rec.*, July 30, 1941, 6580.

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Termination by concurrent resolution is more likely to be provided in measures whose passage, on a preliminary survey, appears doubtful.[13] Without this provision, the Service Extension Act of 1941 would probably not have received even the 203 to 202 vote by which it passed the House.[14] Sometimes, as in the act to mobilize the productive facilities of small business, the reservation is not inserted until the bill reaches the second house and encounters unanticipated opposition.[15]

Whether Congress reserves the right to terminate delegated powers in this manner may thus seem to be solely a question of political expediency. It may be argued that the Supreme Court would ignore such considerations if a case should arise in which it must pass on the constitutionality of this use of the concurrent resolution. This argument is not conclusive. The Court may hold that, since the executive accepted this condition, it is bound to accept the consequences. Moreover, if the Court were to hold that a majority of the two houses cannot terminate the delegation, the President is likewise estopped. For the clause usually reads: "or until such earlier time as the Congress by concurrent resolution or the President may designate."[16] Legislation would therefore have to remain in force either until some specified date[17] or until repealed by a subsequent law.

Whether Congress is limited to these latter means of terminating legislation depends upon the answer to the question, Can a law cease to be a law by any form of action which is not itself legislative? For the negative, Senator Murdock declared: "We have in this provision . . . the unconstitutional provision of delegating to the President the power to repeal this act; and side by side with it we have the other unconstitutional provision of reserving to the Congress . . . the right, by concurrent resolution, to terminate the legislation and thereby deprive the President . . . of his power of approval or disapproval."[18] Opposing the provision in another bill, he said: "We talk . . . about granting under the bill unlimited powers to the President . . . and to others in the executive department, but under this bill the greatest power that we grant to the President is the power to terminate the act whenever he shall see fit to do so."[19] According to

[13] "Perhaps it will be necessary for the executive power of the Government . . . to make this concession in order to get the bill passed. . . . " Senator Murdock, 87 *Cong. Rec.* 1596, Mar. 1, 1941.

[14] *Cong. Rec.*, Aug. 12, 1941, 7227.

[15] *Ibid.*, June 2, 1942, 4951, for Conference Report.

[16] *Public Law* 354, sec. 401. But *Public Laws* 213, 403, and 413 provide for termination at any time only by concurrent resolution. For reverse, see above, note 3, comment on 523, following 482.

[17] *Public Law* 421, Jan. 30, 1942. "Shall terminate on June 30, 1943, or upon the date of a proclamation by the President, or upon the date specified in a concurrent resolution by the two houses of the Congress. . . . "

[18] 87 *Cong. Rec.* 1596, Mar. 1, 1941. [19] *Cong. Rec.*, Jan. 28, 1942, 809.

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Senator Wheeler, "a real doubt is raised as to whether the President's veto power is not being circumvented in a manner not countenanced by the Constitution." "But I think," he concedes, "the committee chose the best method open to it for accomplishing the desired result."[20] Representative Jerry Voorhis said that "where extraordinary powers are being granted by Congress to the Executive, . . . from the standpoint of simple equity and policy it seems to me to be quite defensible for Congress to provide that it can take back those powers without the President having to approve such action."[21] Senator White regarded "the provision as an attempt to define the grant of power. I think upon that basis it is a legitimate and constitutional effort on the part of Congress."[22] Senator Connally was certain of its constitutionality. "That puts it in the bill itself—not in a resolution, subject to the veto power of the President—that it shall terminate. In other words, it has no longer any vitality or effect after the occurrence of this happening or this event. We could just as well have fixed any other determinable event."[23]

Senators Gillette and Murdock did not deny Connally's argument except to insist that the "determinable event" or "the contingency specified could not be an illegal happening or an unconstitutional happening" and "under the constitutional provision the passage of such a concurrent resolution would be an unconstitutional act, in changing an act of Congress."[24] In other words, they were unwilling to say that Congress can terminate legislation only on a date specified in the original act or by the passage of a repealer. If Congress can put into a law any provision for its termination on the occurrence of some contingency, surely it can make the law terminable by a presidential proclamation or by the congressional equivalent, a concurrent resolution.

The plausible explanation that the President has accepted so much legislation terminable at the pleasure of a congressional majority because he did not want the war effort to be "too little and too late" may not be the major reason. Quite possibly he sees the broader democratic implications. He and the leaders of both parties in Congress who have supported the Administration's measures have been confident that the majority will continue to support action pursuant to the authority granted by the laws. If a majority were to withdraw its support, the authority should no longer be exercised. If its exercise were continued, democratic procedure would be flouted. The President and congressional leaders may see in this extension of the concurrent resolution into a new domain a wholly justifiable move on the part of Congress to add a counterweight on its side to balance the extensive powers which the grave national

[20] 87 *Cong. Rec.* 1596.
[21] From a letter to the writer, Dec. 17, 1941.
[22] 87 *Cong. Rec.* 1596.
[23] *Ibid.*, 1597.
[24] *Cong. Rec.*, Jan. 28, 1942, 809.

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emergency requires shall be entrusted to the President. As Senator O'Mahoney said: "After all, war is an executive function; it is not a legislative function."[25] The Congress merely asks the executive branch to recognize its responsibility to the representative assembly which gives it the authority to act. Just as a majority in Congress felt impelled to defend the Supreme Court, which had been annulling many of its laws, rather than support presidential proposals for judicial reorganization, because it feared the growth of executive power, so a Supreme Court may some day find, in the spirit if not in the letter of the Constitution, authorization for the means which Congress employs to maintain its place among the three coördinate branches of our constitutional system.

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The Report of New Jersey's Constitutional Commission. The *Report of the Commission on Revision of the New Jersey Constitution* (Trenton: May, 1942, 59 pp.), as conditioned by the peculiarities of the state's governmental environment, is conventional in philosophy but unique in many particulars. It recommends a new state constitution, which is set forth in full—a proposed constitution relatively short, and showing some rigidity in legislative organization and procedure, but ample flexibility in its executive and judicial provisions.

The two outstanding characteristics of the proposed new constitution are its pronounced emphasis, first, upon positive restriction of the legislature to policy-making functions, and second, upon the identification of administrative responsibility through appropriate structural organization. Judicial reform has been the motivation for constitutional revision in New Jersey for over fifty years, and in recognition, the new document supplies a complete reorganization of the judicial system.[1]

The primary emphasis upon confining the legislature to purely policy-making functions is immediately evident in the legislative article. While legislative terms of office are extended and salaries increased, the really significant changes occur in what in other states might be viewed as minor provisions. Because of a long-standing precedent of Republican legislatures and Democratic governors, the legislature has come to take over a continually greater share of control of administration. Disruptions, and even stalemates, of the legislative process that have occurred in the course

[25] *Ibid.*, Jan. 26, 1942, 653.

[1] An excellent brief summary of the historical development of the New Jersey judicial system, by Arthur T. Vanderbilt, is contained in the *Report of the Judicial Council of New Jersey Pursuant to J. R. No. 16 of the 155th Legislature* (1934), pp. 18–42. Compare Charles R. Erdman, Jr., *The New Jersey Constitution—A Barrier to Governmental Efficiency and Economy* (1934), Appendix, Item 9, which enumerates attempts at judicial reform through constitutional amendment.

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of disposition of the resulting legislative patronage have overshadowed the older issues of legislative organization. For this reason, it will be with the greatest difficulty, if at all, that three new provisions, which should effectively bar any direct legislative participation in administration, will survive the test of legislative acceptance. These would (1) prohibit any executive, administrative, or judicial appointments from being made by the legislature or by either house; (2) make members of the legislature ineligible for any appointive office during the term for which they were elected and for one year thereafter; and (3) require the senate to confirm or reject gubernatorial nominations within thirty days.

Less desirable, but more palatable to the professional politician, is a recommended change from the present annual sessions of unlimited duration to biennial sessions limited to ninety days, except that a special session might be called for a single stated purpose in the interim. This is probably the one regressive step recommended by the Commission.[2]

Practical political history demonstrates, it will be admitted, that continued presence of the lawmakers at the state capitol seriously hampers the administrative process and tends to demoralize the legislative process. In the administrative sphere, the constant presence of the legislature produces much legislative action that properly belongs on the administrative level, and thus defeats the development of administrative initiative and imagination. From the legislative viewpoint, annual sessions of unlimited duration cultivate a casual attitude toward legislative procedure, and have produced in New Jersey the custom, which is not always followed, of restricting meetings of the legislature to Monday evenings. In addition, constant presence of the lawmakers at the capitol tends to unsettle large segments of the population having vital interests, not necessarily inconsistent with the general public welfare, in the maintenance of the legislative *status quo*.

From the fiscal viewpoint, however, it is as impossible to rationalize the choice of biennial sessions in New Jersey as elsewhere. It hardly needs to be demonstrated that one of the chief reasons for failure of state budgeting to achieve the success of some cities lies in the necessity of anticipating revenues and expenditures over a two-year period occasioned by the biennial session.[3] It is problematical whether this loss of fiscal control by the legislature would be offset by gains in legislative procedure, administrative responsibility, and group serenity. The Commission was apparently of the opinion that the balance of values would be favorable.

The continuous nature of the legislative process is recognized, despite

[2] Cf. *Model State Constitution* (1941 ed.), Sec. 307, which provides for continuous sessions of the legislature.

[3] J. Wilmer Sundelson, *Budgetary Methods in National and State Governments* (Sp. Rept. of the N. Y. State Tax Commission No. 14, 1938), Chap. 35.

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the provision for biennial sessions, by provisions which establish a legislative council. The governor is made a member of the seven-member council, and the sponsors apparently hope in this way to bridge the usual gap of partisan differences between the New Jersey legislative and executive branches of the state government. Unfortunately, there is nothing in the experience of any of the legislative councils that have operated in other states, by legislative establishment, to warrant any optimism on the score of gubernatorial coöperation with the legislative council.[4]

With reference to the executive branch, the proposed constitutional provisions would be the first in any state to place responsibility for, and power to achieve, administrative reorganization in the chief executive. No other state, including New York, now confers administrative powers which approach in magnitude those that would be conferred under the Commission's recommendations.

At the present time, the state treasurer and the state comptroller, by virtue of constitutional provision, and the state auditor, commissioner of motor vehicles, commissioner of alcoholic beverage control, and the director of municipal aid, by virtue of legislative provision, are elected in joint meeting of the legislature. Other administrators, such as the commissioner of local government, have been designated by name in the legislation which first established the office. The present constitution also places the attorney-general, secretary of state, and keeper of the state prison beyond the authority of the governor by endowing them with five-year terms of office in contrast with his term of three years. The same device appears in offices established by legislative authority. In addition, the secretary of agriculture and the commissioner of institutions and agencies (the latter one of the most important administrative posts in the state) are appointed by boards over which the governor has no effective control.

The state treasurer and state comptroller, under the Commission's recommendations, are specifically left to be appointed in joint meeting of the legislature, apparently for the purpose of providing that body with a check upon the expenditures which it authorizes in its appropriations. It would be fruitless to seek reasons to justify legislative appointment of both the treasurer and comptroller for this purpose.

In addition to these two fiscal offices, nine departments are established and designated as Agriculture, Commerce, Education and Civil Service, Labor, Law, Public Works, Social Welfare, State, and Taxation and Finance.

The governor is empowered and required to allocate, by executive order, all existing administrative departments, agencies, and offices among

[4] See Maryland State Planning Commission, *Legislative Councils* (Publication No. 21, 1939), pp. 37 ff.

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and within these eleven establishments. The legislature may create new agencies, but upon creation they would be subject to allocation in the same manner by the governor.

Functions, powers, and duties of the various agencies, although defined by statute, may be redistributed by the governor, by executive order, "in such manner as to promote efficiency and economy in the operation of the state government, and to group, coördinate, and consolidate the offices, agencies, and instrumentalities thereof according to major purposes, as nearly as may be." While the governor is given free rein as to allocation of agencies, his orders allocating functions, powers, and duties are made subject to absolute veto by concurrent resolution of the legislature within thirty days.

These striking powers of the chief executive obviously borrow heavily from the youthful federal Reorganization Act of 1939. To the extent that they presage the development of a practice of administrative amendment of legislation, they have fortifying precedent in the long-established judicial rule-making power,[5] and in English administrative experience.[6]

The nine departments established in the proposed constitution may be headed either by a single or a plural executive. In either event, however, the head of the department must, under the terms of the constitution, be appointed by the governor and serve at his pleasure.

Upon analysis, these provisions give adequate expression to Mr. A. E. Buck's six standards of administrative reorganization. It cannot be said, however, that the proposed new constitutional provisions reflect participation in the state reorganization movement as such. While New Jersey has had more than its share of unsuccessful attempts at reorganization of its present more than ninety agencies, departments, commissions, and other offices, the proposed new provisions are directed primarily toward achieving responsibility rather than efficiency in operation.

The provisions of the new executive article may, of course, preface significant functional integration, but they should not occasion any real issue of the case for and against centralization.[7] To those familiar with the peculiarities of the New Jersey scene, the proposals to strengthen the executive represent a choice of political values which requires a fully effective bar against legislative participation in administration. The provisions do promise at least a unification and balance of over-all administrative pol-

[5] E.g., *New Jersey Practice Act of 1912*, sec. 32, now *Revised Statutes (1937)*, 2: 27–149. 3, which provides: "Such rules shall supersede (so far as they conflict with) statutory and common law regulations heretofore existing."

[6] Sir Cecil Thomas Carr, *Concerning English Administrative Law* (1941), pp. 41–47.

[7] See the recent attempts to define the issue by John M. Gaus and Harvey Pinney, in *Annals of the Amer. Acad.*, Vol. 221 (May, 1942), pp. 33–48.

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icy. Any efficiency in operation that may follow would be a welcome but incidental result.

Whether or not the Commission has gone too far in the direction of executive aggrandizement, only time can tell. New Jersey is particularly susceptible to inter-party bargaining and intra-party factional clashes, largely because of the activities of the Hague Democratic organization. The result of such a possible failure of the two-party system obviously is just the kind of a situation that accounts for Mr. Hyneman's dubious thoughts upon state reorganization.[8]

There usually is, on the other hand, sufficient party solidarity in New Jersey to provide a real check upon the executive: this, at least, must have been the sense of the Commission, which was dominated by practical Republicans of the intensely anti-Hague group.

It is evident that the Commission was not unaware of the possible damage to popular control of government that might lie in its proposals regarding executive power. As protection to the legislature against management from the executive office through discreet manipulation of the veto power, a provision in the present constitution permitting executive vetoes to be overridden by a simple majority vote is retained—although a new three-day "waiting period" would be imposed. The present item veto would be strengthened, however, by a requirement of a two-thirds vote to override.

Other evidence of caution on the part of the Commission may be found in its inclusion of forceful constitutional bases for the merit system, and for citizens' suits to restrain any violation of the constitution. Of most significance in this connection is a proposed provision to restrict each governor to a single term of office. At present, Delaware, which restricts its governors to two terms, is the only state with a similar prohibition. While this provision would not permit a personal political dynasty to be created, it would not prevent the development of an heir apparent. As a governmental device, it evidences a distrust of executive authority which might cast doubt upon the whole premise of the Commission's recommendations relating to executive control over administration, were it not clear that the primary purpose is to divorce the legislature from the administrative establishment.

A similar purpose of creating independence and responsibility is evident in the proposed judicial article. A completely new judicial structure is established in the constitution with ample flexibility. The most marked characteristic of the plan is the power and responsibility it confers upon the chief justice of the highest court of the state as administrative head of all the courts, legislative as well as constitutional.[9] An office of executive

[8] Charles S. Hyneman, "Administrative Reorganization," *Journal of Politics*, Vol. I, No. 1 (Feb., 1939), pp. 62–75.

[9] Cf. "Iowa Constitution Enjoins Court Supervision," *Jour. of Amer. Jud. Soc.*, Vol. 25, No. 6 (Apr., 1942), pp. 184–186.

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director of the courts, similar to the federal director of the Administrative Office of the United States Courts, is established to assist the chief justice. Space does not permit a detailed analysis of the proposed judicial system. It is well to recognize, however, that it represents a practical adaptation of Dean Pound's unified court plan to the particular conditions of New Jersey.[10]

In conclusion, a word is necessary as to the unique method recommended for adoption of the proposed constitution. The legislature is advised by the Commission first to seek a mandate from the people to submit a new constitution. Upon approval of this step by the qualified voters, the legislature shall, by law, approve a new constitution (inferentially, of course, the new document recommended by the Commission) and submit it to a popular referendum for acceptance or rejection as a whole.

This method of constitutional adoption, best described as the legislative revision method, as distinguished from the constitutional convention and specific amendment methods, is not difficult to sustain in theory. The New Jersey legislature, in a juridical sense, has always enjoyed parliamentary status. As such, it may be deemed competent to initiate the process of constitutional change reserved by the people in the present constitution, which otherwise recognizes only the method of specific amendments. The relevant present provision, contained in the article on "rights and privileges," recites that "all political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it." In view of this language, it would be improper to construe express mention of the method of specific amendments to exclude, by implication, any other method by which the people may "alter or reform" their government.

The preliminary mandate to submit a new constitution certainly overcomes any difficulty in reconciling the position of the legislature as a functional instrumentality under the constitution and as a constituent assembly to "alter or reform the same." In a practical sense, the proposed method not only avoids the expense of a convention, but offers the only realistic approach to constitutional revision in face of the adamant refusal of rural senators, who have blocked legislative authorization of a convention, to risk the effects it might have upon the present basis of legislative representation. The Commission's proposal nicely avoids this pitfall by giving advance assurance that the existing bicameral plan and representative basis will remain undisturbed.[11]

In summary, the report of the Commission evinces a most adroit prac-

[10] See Roscoe Pound, *Organization of Courts* (1940), Chap. 7.

[11] See John Bebout and Julius Kass, "How Can New Jersey Get a New Constitution?," *University of Newark Law Rev.*, Vol. 6, No. 1 (Mar., 1941), pp. 1–69, for a thorough review of problems of obtaining a convention in face of refusal of the rural senators to risk its effect upon the present basis of legislative representation.

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tical application of theoretical politics to the peculiarities of government in the New Jersey environment. Like most other measures that at once challenge too many vested interests, however, it is destined to prove abortive unless it is able to capture popular imagination and momentum.

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Special Interim Commissions in the Indiana Legislative Process.* Between 1920 and 1940, the General Assembly of Indiana through resolution or act authorized no less than twenty-four special interim studies of legislative problems. In addition to these, the governor on eight different occasions set up commissions to study and report on matters of legislative concern. Diligent search has failed to disclose any evidence of activity on the part of a fourth of these commissions, but the others turned in reports averaging one hundred pages in length and at an average cost of $4,000.[1]

Aside from the thirty-two more formal authorizations of interim studies, i.e., studies to be carried on between sessions and usually, at least in part, by non-members of the General Assembly, the legislature has authorized no less than ten other investigations requiring more or less technical knowledge or assistance. In 1932, for example, a committee of four members, two senators and two representatives, was authorized to investigate the advisability of installing amplifiers in the Senate and House chambers. On another occasion, a commission of two senators and two representatives was appointed to investigate the prices paid for tomatoes in Indiana as compared with prices paid in other states. This commission was authorized to report to the governor, who would then "take whatever steps he deemed necessary."

As can be seen, on an average about two studies a year have been authorized during the last two decades. In somewhat more than one-half of these, actual studies have been made and reports submitted. In this note, attention will be directed primarily to the authorizations from which reports resulted.[2]

The study commissions during this twenty-year period in Indiana have demonstrated at least four somewhat distinct types of procedure. In the first place, where funds are provided by statute or from the gover-

* The author wishes to acknowledge the valuable assistance rendered him by Gilbert Bailey, former research assistant, in the preparation of this study.

[1] This cost figure is probably much too low. Usually no appropriation would be made to a commission, and if it spent money it was from the governor's contingent fund or other similar source. Only through an examination of all the vouchers for such funds could one discover all the expenditures. The writer, while employed by a commission, was permitted on one occasion to hire two persons to be placed on the payroll of a regular department.

[2] Eight of the studies authorized could not be found.

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nor's contingent fund, a separate staff is set up under an executive secretary, research director, or some such officer, who is charged with the actual assembling of material and preparation of the report. Individual members may take an active interest in the proceedings or else may be satisfied simply to sign the final report and receive a special leather-bound copy with their names individually embossed thereon. Secondly, members may assume responsibility for some aspect of the investigation as agreed upon or assigned by the chairman. Each individual member, with or without additional assistance from the outside, prepares a draft for his particular sub-topic; and the group considers this draft in somewhat the same manner that members of an appellate court consider a preliminary draft of an opinion written by a designated member. Under such procedure, all members of the commission are usually well acquainted with the final report, and such reports are ordinarily valuable. Another technique employed, especially for briefer reports, is for the commission to meet once or twice as a group to discuss the problem before them, or in some cases to hold public hearings at which outside citizens or groups are asked to appear and present their ideas on the subject. Afterwards, a member of the group is asked to prepare a résumé of the ideas put forward in these preliminary meetings. This draft forms the basis for future discussions by the members meeting as a group. Eventually, agreement is reached on the final draft of a commission report. A fourth type of procedure, and one that has been employed with surprising frequency, is for an interested administrative department, or even a private organization, to "lend" the commission an employee to carry on the research and prepare the report. The actual procedure is similar in other respects to that outlined as number one above.

This officially sponsored research, comprising a body of printed matter, statistics, graphs, and tabular information covering more than 2,500 pages and costing more than $90,000, does not reflect a continuing indulgence of legislative curiosity, since the surveys, in the main, have grown out of immediate and pressing dissatisfactions. For example, the "immediate occasion" for the Survey of Joint and Consolidated Schools in 1931 was "the evidence of dissatisfaction among some schools of this type." The study of the Observance and Enforcement of Law in 1931 was prompted by an apparent evil, "the increasing prison population"; the Special Tax Study of 1935, by the "dissatisfaction with the gross income tax"; the Survey of Boards and Commissions in 1925, by "a very widespread feeling . . . that boards and commissions have been created . . . in great numbers and at enormous expense, principally for the purpose of creating jobs in payment of political debts. . . ." These studies, with respect to the specific considerations which gave rise to them, are typical. In any case, however, a particular problem was posed and an intelligent

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remedy sought. The ideas for these investigations usually came from sources outside the legislative body. Although not a typical one, it is of passing interest to note that the immediate cause of the legislative commission to investigate the prices paid for tomatoes was that it had been "reliably reported that the price paid for tomatoes in New Jersey during the year last past was eighteen dollars per ton, whereas the price paid in this state was nine dollars per ton."

The more general factors which have helped to precipitate officially sponsored research are less easily ascertained and described. Certain organizations with tender social consciences frequently have prevailed upon the governor or the legislature to authorize special studies, it being a tactic of such objectively-minded groups to fortify themselves with facts when they are urging reform. Similar appeals have grown out of the unhappy experiences of administrative bodies, instanced by the Indiana Revenues Study Commission, sponsored by tax administrators. It may also be that the General Assembly feels obliged periodically to temper the fanfare of oratory and the traditional law-making process with systematic study, subjecting the most expensive of state functions to the most enterprising scholarship—if and when funds are available from the governor's contingent fund. Then again it may be significant in a psychological sense that six of the surveys were called for by the 1929 session of the General Assembly. The number, but not the content, of the studies initiated in that session suggests the possibility that the legislature is more likely to resort to the methodical investigation of particular problems when problems in general are more pressing. In view of the fact that in many cases no reports were ever submitted and that no further consideration has been given to the matters, one might well conclude that the creation of a commission is a method of escape from a problem upon which legislators do not care to take a definite stand.

The faith of the legislature and the chief executive in prosaic facts and figures, in the utility of patient study, has been instanced with surprising frequency. Every legislative biennium has seen one or more studies authorized by either the governor or the General Assembly. The size of this body of research is noteworthy, especially when measured in terms of human effort. Although the specific reports range from the ponderous 772-page study of the Committee on Governmental Economy to a trifling six-page report of the Committee on Election Laws, each of the surveys, with few exceptions, embodies the painstaking work of five or more specially qualified members over a period of several months to two years. Textual material in reports is often buttressed with an impressive array of presumably reliable information in chart or graphic form. The *Indiana Education Survey* of 1923, for example, is elaborately supported by 36 charts and tables; the general *Tax Study* of 1939, by more than 150

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graphs, tables, and charts; the *Report on Governmental Economy*, by 45 charts and 73 tables. Seven of the studies have drafts of proposed bills appended to them, ranging up to thirteen proposed bills in a single report.

The weight of knowledge seldom decides an issue when the interests of opposing groups compete for legislative favor, but the "argument of numbers" appears to speak more eloquently for certain unfortunate groups which have no private lobby. Here, if anywhere, it seems that factual information may act as a surrogate for practical politics.[3] The observed congeniality between research and humanitarianism is demonstrable by the present survey, eight studies having been devoted to public welfare problems and charitable and correctional services. One of the most careful surveys which the state has undertaken is contained in the *Report of the Commission on Child Welfare and Social Insurance*, published in 1920. The most persistent and expensive exploration in a particular specialized field has been done by the Indiana Committees on Mental Defectives. From 1916 to 1922, three committees spent $21,000, marshalling information and arguments on which a reasoned reform of legislative policy relating to mental defectives might be founded.[4]

Lesser studies have been made by committees and commissions on (1) Tuberculosis, 1930; (2) The Prison Problem in Indiana, 1938; (3) Child Welfare in Indiana, 1938. Somewhat akin is the *Report of the Committee on State Insurance for Workmen's Compensation*, 1938.

The most expensive function which the state as a whole performs has been the object of the most extensive inquiry. In seven years, Indiana spent more than $26,000 on the study of educational problems: $15,000 on one general survey of educational standards and facilities by the Indiana Education Survey Commission, and $11,293.94 for studies of more specific problems by (1) the Indiana Rural Education Survey Committee, 1926; (2) the Survey Committee of the State Institutions of Higher Learning, 1926; (3) the Commission for a Survey of the Problem of State Aid for Public Schools, 1931; and (4) the Joint and Consolidated Schools Survey Commission, 1931.[5]

On three different occasions since 1920, the legislature has ordered

[3] See George H. Jaffin "Prologue to Nomostatistics," *Columbia Law Review*, Vol. 35, p. 1 (1935).

[4] The first study, made in 1917, was authorized by Governor Samuel M. Ralston, who responded to an appeal from the state board of charities. Ten counties were surveyed. After the 1917 legislature had appropriated $10,000 to continue the work, the committee was reappointed by Governor Goodrich. Eight additional counties were surveyed and the second report, published March 6, 1919, was distributed widely, not only in Indiana but in most of the other states of the Union. The committee was continued by Governor McCray. The legislature appropriated $1,000 at the special session in 1920 and $10,000 at the regular 1921 session.

[5] Cost, respectively: (1) $5,810.81; (2) $4,034.22; (3) $1,106.42; (4) $342.49.

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special studies of problems relating to taxation and the collection of revenue. The first *Tax Study*, published in 1935, was occasioned by the apparent dissatisfaction with the gross income tax, its chief purpose being to determine the feasibility of modifying or repealing the act. The Indiana Revenues Study Commission was interested in the possibility of establishing a single coördinate department to handle all of the revenue-collecting functions of the state. The *Report of the Indiana Tax Study Commission* of 1939, broader in scope and more permanent in character, is evidence of a genuine effort to extend knowledge of taxation.[6]

Indiana has had two interim studies on administrative organization. The first, authorized by the governor in 1925 and carried out on a small scale, aimed at the elimination of unnecessary boards and commissions and the consolidation of administrative tasks. The *Report of the Committee on Governmental Economy*, from the standpoint of sheer bulk the most ambitious study the state has made, was meant to be the basis for a reorganization of state and local administrative systems.

With the possible exception of the studies made by the Corporations Survey Commission, 1929,[7] and the Commission for Indiana Financial Institutions, 1932, which might be grouped together, the remaining surveys are miscellaneous in character, consisting of the reports of: (1) the Committee on the Observance and Enforcement of Law, 1931; (2) the Commission of Representatives of Railroads and Brotherhoods, 1931; (3) the Highway Survey Commission, 1936; (4) the Commission on the Study of Liquor Control, 1939; (5) the Commission on Election Laws, 1939; and (6) the Indiana City Manager Study Commission, 1940.

The cause and effect relationship is so obscure that the influence of this body of research as a determinant of legislative policy cannot be measured. Almost every study was made because the General Assembly, the governor, an administrative body, or a civic group recognized an existing evil. Thus the conditions which suggested a need for a change of policy already were present in the unmistakable form of general or group dissatisfaction with certain laws. The fact that no legislation resulted from an interim study does not indicate lack of success of or need for the investigation. Such a study could very well demonstrate the sufficiency of legislation, and hence contain no recommendations for statutory changes. Where changes were suggested, the modification of policy has not infrequently followed the recommendations of a special interim commission.

[6] Copies are available of one *Tax Study* made prior to 1920. It was authorized by Ch. 114, Senate Bill 342, Sixty-ninth General Assembly, 1915.

[7] The Corporations Survey Commission has been in continuous existence since its creation in 1927, having been continued by concurrent resolution in 1929, and again in 1935, for the purpose of preparing and submitting amendments to existing laws governing corporations in Indiana.

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In at least two instances, comprehensive bills prepared by such commissions and involving sweeping changes in policy have been adopted promptly with only minor changes.[8] Although other investigating committees have not been rewarded by such immediate action, their work has frequently been acknowledged in only slightly less tangible form.[9] And in the process of determining by fact-finding study whether someone's convictions are true, it is not at all unlikely that the ends as well as the means of legislative action have been further influenced at many points. A commission may find the task too great for a group with limited resources and authority. The executive-appointed Commission on the Study of Election Laws in 1938 found the laws so confusing and inadequate that it simply recommended a legislative commission to make a full and complete study of the matter.

Perhaps the real value of these studies, however, lies in the very fact that many of their carefully reasoned conclusions and recommendations, supported by evidence which in some cases probably would be more compelling today, were not immediately transformed into law. Paraphrasing a Biblical statement, one might say "a legislative prophet is not without honor save in his own generation." Some of the recommendations of the Child Welfare Commission published some twenty years ago reflect a policy more progressive than that exemplified by our present laws relating to children. The timeliness of some of the studies included here as sources of factual information is not open to question. For example, the *Report of the Commission to Make an Educational Survey of Indiana* is, according to at least one educational authority, almost as useful as when it was published in 1923. The most recent Indiana bill concerning joint and consolidated

[8] The General Corporation Act of 1929 was modeled after the draft of an act submitted the same year by the Corporations Survey Commission, and the bill proposed after extended research by the Survey Commission of Financial Institutions became the new Financial Institutions Law of 1933.

[9] A few examples will suffice. The recommendations of the Child Welfare Commission of 1920 were, in the main, enacted into law the following year; the conclusions of the Committees on Mental Defectives from 1916 to 1922 embody the principal modifications of legislative policy with respect to the feeble-minded and the insane; the teacher licensing law of 1923 followed the suggestions of the General Education Survey Committee of that year; most of the recommendations contained in the *Report of the Observance and Enforcement of Law* in 1931 were enacted piecemeal in 1931, 1933, and 1935; the observations of the Special Tax Study Commission of 1935 were to a considerable extent reflected in the 1937 amendment of the Gross Income Tax Law; a portion of the *Report of the Highway Survey Commission* of 1936 became the Vehicle Highway Account Act of 1937; the 1939 General Assembly acted on two of the recommendations of the Committee on Child Welfare which published its report the previous year; and the recommendations of the Liquor Study Commission in 1939 were in a large measure followed in the amendments to the Alcoholic Beverages Act passed in that year.

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schools is only one of several examples of the direct manner in which many of the studies would have been relevant to the business of the most recent legislative session. The cost of most of the studies does not even suggest the amount of time and effort expended or their value as repositories of factual information, most of the members having served without compensation.[10] Of the twenty-four reports mentioned here, at least fifteen have relevance to recurring problems, and probably all of them possess some present-day utility. Nevertheless, it is quite certain that to a considerable extent this body of information is ignored by legislators and administrative officials.

In spite of the fact that the value of these studies depends to such a great degree on their timing and availability, there is no orderly method of publication, distribution, publicity, or custody. Several have been badly timed, being completed after the time had passed for legislative consideration of the subject-matter or too late to come effectively to the attention of the legislators. In only one instance does there seem to have been a wide distribution of the report; in at least four, it seems evident that the committees were not even aware of an earlier study in the same field. One study costing $5,000 was published by making typewritten copies, only one of which seems to be extant. Only one of several state officials consulted on the matter realized that more than four or five studies ever had been made, and no official knew with any certainty where copies could be procured.

The above point should be emphasized. The present writer has had an official connection with three of the commissions here under review. Two of them submitted reports printed in rather large volumes. The commission in each case was at an end the day when a single copy of the report was handed to the governor. In no case did the governor care to have an additional three thousand copies carted into his office. As secretary of each of the two commissions, I prevailed on a sympathetic administrative officer to lend the expiring commission storage space and mailing facilities in his official quarters. From there, copies were sent to the principal incumbent executive, administrative, legislative, and ju-

[10] The cost of the study of Governmental Economy, for example, would have been several times $5,576.53 if all the members had been paid for their services. The listed expenditure of the Study Commission for Indiana Financial Institutions would not have paid for the paper the report was printed on. When the Indiana Education Survey was made in 1923, professional services "valued at $35,000.00" were a donation of the General Education Board. Funds, clerical workers, and special tabulations often have been supplied by various operating departments. Printing costs, moreover, are paid out of the general printing fund. From the point of view of cost-accounting, it is thus impossible to determine the cost of most of the studies or to make a satisfactory comparison with the cost, for example, of a legislative council.

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dicial officers; to the public libraries of the state; and to a hastily compiled list of citizens and organizations. No permanent office or department was under any legal obligation to keep or dispose of the remaining copies. Many people have asked how to obtain copies of these reports. Neither is more than four years old; no doubt several hundred copies of each are piled in one of the dark storerooms of the State House; but for practical purposes they are "unavailable." This experience provokes the suggestion that each resolution or statute which provides for any kind of commission should specifically charge some agency of the government, perhaps the state library, legislative bureau, or secretary of state, with the publication, custody, and distribution of the reports. Acts of the General Assembly, the Journals of the two houses, the Supreme and Appellate Court *Reports*, the *Year Book*, and the *Statistical Report* are published and distributed in orderly manner. There is no reason why the interim commission reports could not also be handled in a more satisfactory way.

The surveys and studies conducted by the state have been characterized, moreover, by a disorderly manner of financing. Although the legislature has a few times appropriated funds, it commonly appeals to the governor by joint resolution to pay for surveys out of his contingent fund.[11] When it is known or becomes apparent that sufficient funds will not be available from this source, additional sums are sometimes obtained from the operating department interested in the survey or from some other source. Then again, the idea may have to be abandoned or the uncompleted study discontinued. Although a diligent search was conducted and extended inquiries made, eight studies authorized by the General Assembly since 1920 could not be found at all; and of this number, four probably were dropped for lack of funds. Speaking from experience and observation, the writer can say very definitely that a governor not in sympathy with a particular investigation can pretty well stifle it; or if he is in sympathy with it, he can give it considerable "nourishment" from his contingent fund. If there is an actual need for an investigation, the governor should not be allowed to exercise this power, which amounts virtually to an absolute veto.

It is significant that four missing studies, which seem not to have been made, were each authorized mainly or exclusively for the purpose of eliminating the confusion and uncertainty of laws pertaining to particular subjects, namely, child welfare, mining, schools, and civil procedure. In fact, although six special study commissions created by resolution since 1920 have been specifically charged with the duty of codifying, systematizing, and coördinating a particular portion of the law, the re-

[11] In the case of eight studies, the cost could not be ascertained without running thousands of contingent-fund vouchers.

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ports of only two were found,[12] indicating that a special study commission of this character is not an adequate body to undertake a codification task.[13]

This common failure of special codification commissions is an unhappy fact, but the need for some permanent body such as a legislative council is even more urgently suggested by the fate of some studies which have been undertaken. To spend thousands of dollars on research in a particular field is an inconspicuous but none the less real extravagance; and to draft the free services of eminent men from several states is a shameful waste of human effort, unless the work is effectively timed and kept readily and permanently available. It is noteworthy that there was little legislator-participation in the making of these studies. Members of the legislative body were sometimes members of the study commissions, but in most instances they did not participate in the process at all.

States in which competent legislative councils have been established will no doubt find it unnecessary to make extensive use of interim study commissions. The very nature of the council would seem to indicate this. There may still be occasionally a need for a study independently of even the very best council. The council itself may need to be investigated! Illinois has had investigations carried on by interim commissions apparently without any contact with the Legislative Council; and of fifteen joint legislative investigatory committees created from 1939 through 1941, in only one case was reference made to the possible use of the Legislative Council in the prosecution of the investigations. In Kansas, on the other hand, we find the 1939 legislature specifically calling on the Legislative Council to investigate matters which almost certainly would have called for the creation of special interim commissions in many other states. One of these entitled, "An act authorizing and directing the research department of the Legislative Council to make a study of administrative and revenue collecting agencies . . . ," was almost identical in its purposes with a resolution the same year in Indiana creating a special commission to study the problem.

It probably could not be demonstrated that, page for page, the reports of legislative councils are made at any less expense than are the interim reports in Indiana. However, from the standpoint of certainty of a report, timeliness, availability, and sheer usefulness the former have doubtless

[12] *The Report of the Corporations Survey Commission*, 1929, and *The Report of the Survey Commission for Indiana Financial Institutions*, 1932.

[13] It also may be noteworthy that the Corporations Survey Commission, which did produce in 1929 a virtual code of corporation law, has, as noted above, had a continuous existence since its inception in 1927, occupying a unique position as a kind of legislative council, but concerned only with the laws pertaining to corporations.

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proved superior. If a state has an abbreviated legislative session, such as the sixty-one day session in Indiana, almost all of the legislative investigatory work must necessarily be carried on in some "extra-curricular" manner. Very definitely a conclusion to be drawn from this paper is that there is a need for some kind of central office or secretariat through which legislative studies and investigations should clear. It does not necessarily follow that Indiana should establish a legislative council. There is no magic in the name. Indiana has at least three agencies already which are charged, at least in part, with the performance of functions associated with a legislative council, namely, the Interstate Coöperation Commission, the Legislative Bureau, and the Judicial Council; and one might even include the State Planning Board.

With the reference library which the Legislative Bureau has already, the office space it has, and its "going concern" value, it would be a simple matter to convert the bureau into an agency capable of serving as a clearing house for all legislative interim studies and of performing functions now performed by legislative councils in other states. The Bureau's research facilities would need to be expanded. This should not involve a large additional outlay. The Bureau should serve more as a coördinating agency in tapping the research facilities of the public and private universities and colleges of the state, and of state departments, including charitable, penal, and correctional institutions, and of local public or private agencies. One of the best demonstrations of the marshalling of research talent in the state was furnished by the work of the Committee on Governmental Economy, whose report was submitted in 1935.

Whether it is done through one of the existing agencies or through a legislative council to be established, there is a crying need for a coördination of legislative investigative work and a systematic method of publication, custody, and distribution of the results of the investigations made. If a report is worth printing in large quantities, it is surely worth being made available to those interested in securing copies.

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War and the Federal Service. In time of war, there is a tremendous growth in the number of federal employees. This is due both to the establishment of new war agencies and to an expansion in the activities of existing agencies whose work constitutes a part of the war effort. Coincident with the growth of the federal service in war-time is the contraction of the area from which new employees can be selected. Many persons otherwise eligible for government employment either volunteer or are drafted for military service, while others are attracted by the lure of higher salaries in industry. Thus the problem of securing and retaining the services of an adequate and efficient body of government employees becomes in time of war a far more serious one than in time of peace. It is the purpose of this article to describe the principal means which the federal government is using to obtain the additional civilian personnel needed for the present war effort.

During the eighteen months immediately preceding the declaration of war against the Axis Powers, the number of federal employees increased from 1,002,820 to 1,545,131, which represents a gain of approximately fifty-four per cent. Since December, 1941, the rate of increase has been even greater.[1] Almost every department and agency of the government has shared in this growth, although naturally the greatest increase has been in the war agencies. In the summer of 1940, only three departments and eight other agencies were classed as defense organizations by the Civil Service Commission, but by February, 1942, every department and all but eight other establishments reported defense activities.[2] The defense effort seems to have been responsible at that time for personnel increases in seven departments and seventeen other agencies, as well as for the creation of at least six new agencies.

It should be pointed out in connection with war-time expansion of personnel not only that there are new positions to be filled but also that vacancies are created through losses to the military service as well as to private industry. Civilian employees of the government are not automatically deferred on occupational grounds. There was, however, no uniform policy among federal departments with respect to requests for defer-

[1] Total employment as of June 30, 1942, was 2,207,754, an increase of nearly forty-three per cent over the preceding November. For detailed figures, see *Monthly Report of Employment, Executive Branch of the Federal Government*, issued monthly by the Statistical Division, U. S. Civil Service Commission.

[2] The only agencies reporting no defense activities were the American Battle Monuments Commission, Board of Governors of the Federal Reserve System, Board of Tax Appeals, Government Printing Office, Mount Rushmore National Memorial Commission, National Capital Park and Planning Commission, National Mediation Board, and Railroad Retirement Board.

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ment until President Roosevelt issued the following declaration of policy on February 9, 1942:

"1. Request for the deferment from service under the Selective Training and Service Act, approved September 16, 1940, as amended, of any officer or employee of the United States government shall be made only by the head of the appropriate department, independent establishment, or other agency, or by a person designated by such head to take such action. Such request must be made on the form or forms prescribed by the Selective Service System.

"2. No such request for deferment shall be made except when the head of the appropriate agency, or a person designated by him, shall certify that

(a) The officer or employee is in a position, the duties of which are clearly related to the war effort or to essential supporting activities, and that

(b) The officer or employee is in a type of position listed by the Selective Service System as one in which it is difficult to obtain replacements, or a type of position in which he cannot be readily replaced except by the training of a successor through work experience for a period of at least six months.

"3. The initial request for deferment will, in accordance with Selective Service regulations, be for a period of not to exceed six months. If the duties of the position occupied by the officer or employee are of a type which require work experience of less than two years to attain a reasonable competence in their performance, the appropriate agency will take immediate steps to train a successor.

"4. Request for deferment beyond the initial six-month period will not be made except when the head of the department shall certify that one of the following conditions exists:

(a) That to attain reasonable competence in the performance of the duties of the position occupied by the officer or employee requires work experience of two years or more.

(b) That a replacement has been secured, but that a further period of training is required before the trainee is qualified to assume the responsibilities of the position.

(c) That the Selective Service System has found that a shortage of persons with the qualifications required in the position exists and it has been impossible to secure a replacement."[3]

An inquiry into the number and merits of requests for deferments, which was made by a sub-committee of the Senate Committee on Appropriations in the spring of 1942, showed approximately 6,000 such requests as of March 1. The Committee found also that "a large percentage . . . were for employees 25 years of age or younger, many of whom had comparatively little governmental experience." As a result of this finding, a

[3] This statement of policy was prepared by a committee consisting of the Secretary of the Treasury, the Secretary of War, the Secretary of the Navy, the Director of the Selective Service System, and the Administrative Assistant to the President in charge of the Liaison Office for Personnel Management.

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list of approximately 900 cases was prepared and turned over to the Selective Service System for further investigation.[4]

I. DOLLAR-A-YEAR MEN

In several of the war agencies, the federal government used during World War I, and is using at the present time, so-called dollar-a-year men, who are in most instances on loan from private industry. The total number of positions filled by this group is uncertain. The War Production Board reported on March 26, 1942, that it had 395 dollar-a-year men on its rolls, in addition to 140 persons who were serving without compensation, or on a so-called "w.o.c." basis.[5]

The principal reason for the employment of dollar-a-year men lies in the fact that in war-time federal control is extended into fields of business in which the government lacks competent personnel. The conversion of industry from a peace to a war-time basis and the coördination of industrial effort in order to secure maximum production within a minimum time involve a multitude of technical questions which require for their solution a utilization by the government of the technical knowledge of industrial leaders. Such persons usually do not, as is the case with regular government officials, sever their former business connections when they accept federal employment. They are simply lent to the government for the duration of the war.

In his testimony before the Senate Defense Committee on the use of dollar-a-year men by the War Production Board, Donald Nelson expressed the wish that it were possible to employ these men on a regular government salary, but stated that such a policy was out of the question. He pointed out that the type of men who were needed are earning more in private industry than the government could pay them, and that they could not sever their former connections because of financial obligations incurred upon the basis of their existing income. "Furthermore," he continued, "when we bring these men in for this war effort, we are not offering permanent careers to them. In the very nature of things, we are offering them temporary jobs. So, if we did not have any provision for dollar-a-year men, we should in every case be forced to ask these men to sever their old connections entirely to take a temporary job at salaries which might not enable them to meet their fixed obligations. In practice, then, we would usually get from industry only older men who were independently wealthy and who could therefore afford to make the break, or those who have already retired. I do not think the Congress could approve the

[4] *Transfer of Employees, Conserving Office Space, Relief in Housing Conditions, and Promotion of Economy and Efficiency*, Report of a Sub-Committee of the Committee on Appropriations, Senate Report, 77th Cong., 2nd Sess. (Subcommittee Print), p. 15. [5] *Washington Star*, Mar. 26, 1942.

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principle of such an arrangement, and I do not think the Congress would like to limit the War Production Board to the ranks of the very wealthy in the selection of personnel."[6]

The principal criticism of the use of dollar-a-year men during the present emergency has come from the Senate Defense Committee.[7] In its report of January 15, 1942, the committee alleged that the companies by whom dollar-a-year and "w.o.c." men were employed received both tangible and intangible benefits from the loan of their services to the government. These men, the report pointed out, "spend a considerable portion of their time during office hours in familiarizing themselves with the defense program. They are, therefore, in a much better position than the ordinary man in the street to know what type of contracts the government is about to let and how their companies may best proceed to obtain consideration. They also are in an excellent position to know what shortages are imminent and to advise their companies on how best to proceed, either to build up inventories against future shortages, or to apply for early consideration for priorities. They can even advise them as to how to phrase their requests for priorities. In addition, such men are frequently close personal friends and social intimates of the dollar-a-year and w.o.c. men who do pass upon the contracts in which their companies are interested."[8]

The intangible benefits said by the report to accrue to the companies lending personnel to the government grow out of the fact that "all important procurement contracts must be approved by these dollar-a-year and w.o.c. men, which means that contracts must conform to their theories of business." The principal danger lies, not in their intentional acts, but in "their subconscious tendency, without which they would hardly be human, to judge all matters before them in the light of their past experience and convictions."[9]

Criticism of dollar-a-year and "w.o.c." men in the Senate Defense Committee report led Mr. Nelson to promulgate rules governing their appointment to positions in the War Production Board. In the case of the former, the rules provided that: (1) each appointee "must be a citizen of the United States, of high integrity and good moral character, of outstanding experience and ability, qualified for a responsible administrative, technical, consulting, or advisory position, and in receipt of earned income

[6] *Investigation of the National Defense Program*, Hearings Before a Special Committee Investigating the National Defense Program, Part 10, 77th Cong., 1st Sess., p. 4028.

[7] The Special Committee Investigating the National Defense Program created by S. Res. 71, 77th Cong., and commonly known as the Truman Committee.

[8] *Additional Report of the Special Committee Investigating the National Defense Program*, Senate Report No. 480, Part 5, 77th Cong., 2nd Sess., p. 8.

[9] *Ibid.*, pp. 8–9.

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from his current nongovernmental employment at a rate of at least $5,600 a year"; (2) "the position to which the appointment is to be made must be one requiring special business or technical knowledge and experience"; (3) "no dollar-a-year appointment shall be made to any position if, by reasonable effort, an equally well-qualified person can be found who will serve on a regular governmental salary basis"; (4) "no person so engaged shall make determinations directly affecting the affairs of the firm or company in which he is employed"; and (5) "no permanent appointment shall be made except after a thorough investigation of the proposed appointee by one of the investigatory agencies of the Government."[10]

The rules governing the appointment of persons on a "without compensation" basis provide that "such appointees may serve in an advisory capacity as government consultants working in the public interest and not as representatives of a private employer or industry. Any person serving on such a basis may not be permitted to assume any administrative responsibility or to exercise any authority over, or direction of the work of, executives or employees of the War Production Board."[11]

Although dollar-a-year men have been criticized by the Senate Defense Committee, they have, on the other hand, been defended by the Committee on Military Affairs of the House of Representatives. In the second interim report of the latter's Special Committee No. 3, which was made on February 11, 1942, it was stated that "while it is true that the dollar-a-year man may retain his interest in certain firms and corporations, the committee believes that in by far the greater majority of cases his loyalty to Government interests has remained unaffected, and that the services rendered to date by the dollar-a-year men have been extremely useful and in many cases indispensable to the conduct of the war program." This conclusion was reaffirmed by the Committee on Military Affairs in its interim general report of June 23, 1942, at which time it was further stated that "the committee feels that in most instances men drawn from industry, whether as dollar-a-year men or compensated for their services, have rendered valuable, sincere, and conscientious service to the war effort. They have brought to the production program a wealth of knowledge and experience the necessity of which should be obvious. It cannot be expected that such men should sever all connections with the business world; nor should they be subjected to criticism or suspicion solely because of existing or former industry connections."[12]

[10] War Production Board, General Administrative Order No. 4, quoted in Investigation of the National Defense Program, Part 10, *op. cit.*, pp. 4253–4254.

[11] War Production Board, General Administrative Order No. 5, quoted in *ibid.*, pp. 4257–4258.

[12] *Interim General Report of the Committee on Military Affairs*, House Report No. 2272, 77th Cong., 2nd Sess., p. 259.

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These conclusions were reached as a result of an investigation by the committee of charges made by Robert R. Guthrie against the dollar-a-year men at the time of his resignation as Chief of the Textile, Clothing, and Leather Goods Branch of the War Production Board. The Senate Defense Committee, which also investigated the same charges, reported, on the other hand, that "the Guthrie case points to the conclusion that certain dollar-a-year men . . . are unable to divorce themselves from their subconscious gravitation to their own industries."[13]

House and Senate committees have thus reached almost diametrically opposite conclusions with respect to the dollar-a-year men. One has given them what might be termed a reasonably clean bill of health; the other holds them primarily responsible for an alleged failure on the part of the War Production Board to secure maximum war-time production.[14] The resulting situation is both unfortunate and confusing. The war-time relationship of government to business makes the services of the nation's business leaders almost indispensable to the success of the war program. They should not be criticized solely because of their former connections, nor, on the other hand, should they be vindicated if their acts are not in the public interest.

II. WAR SERVICE APPOINTMENTS

As already pointed out, the number of federal employees increased from 1,002,820 to 1,545,131 during the period from June, 1940, to December, 1941, and is still increasing. Since by far the largest part of these additions have been to the classified service, the magnitude of the Civil Service Commission's recruiting job is readily apparent. It has, in its own language, had to "beat the bushes" for qualified personnel. Its recruiting program was intensified during 1940 and 1941 "by utilizing every channel of publicity for its examinations, including newspapers, trade journals and other publications, the radio, the motion-picture industry, colleges and trade schools, and labor, professional, and scientific organizations; through personal canvassing by its special representatives and examiners and by the secretaries of its boards of United States Civil Service examiners; by securing the aid of other governmental organizations such as the Social Security Board, the Railroad Retirement Board, and the Post Office Department; and by sending special representatives or examiners to colleges, meetings of trade and labor organizations, and other promising sources of supply. Examinations in which particular difficulty has been experienced in securing eligibles have been placed on a consolidated list, which has been displayed in every post office throughout the nation and has been given publicity in many other ways. In occupations for which

[13] *Additional Report of the Special Committee Investigating the National Defense Program*, Senate Report No. 480, Part 8, 77th Cong., 2nd Session, p. 20.

[14] See *New York Times*, June 19, 1942.

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fully skilled and experienced workers are no longer available, provision has been made for recruiting persons with related basic training and experience, or with aptitude for developing skill, and for giving them further training on the job. Age limits and physical requirements have been liberalized for positions in which immediate or prospective shortages of fully qualified persons exist. The employment of women in critical occupations has been encouraged wherever their employment is practicable."[15]

Not only did the Civil Service Commission intensify its recruiting program during 1940 and 1941, but it also subordinated, where it seemed desirable to do so, existing civil service requirements to the needs of defense agencies. "It has permitted the retention by defense agencies of many temporary employees who have acquired training and experience in the course of their employment, even though they are not immediately within reach on the register for probational appointment. Whenever necessary, it has exercised its power, under Executive Order No. 8564 of October 8, 1940, to authorize the filling of any position connected with the national-defense program, without regard to the competitive requirements of the civil service rules, 'whenever, because of a public exigency directly connected with the national-defense program, or because of the urgency for the immediate filling of a position involved in such program, the Civil Service Commission determines that it is in the public interest to do so'."[16]

Furthermore, the Civil Service Commission during 1940 and 1941 streamlined its requirements and procedures in order to expedite the examination and placement of available workers. Changes in the examining process which were authorized included "extension of maximum age limits and revision of experience requirements in examinations for occupations in which there was an existing, prospective, or possible future shortage of workers; liberalization of physical requirements; further extension of the use of continuously open examinations; use of unassembled instead of assembled examinations when necessary; and standardization of district system examination announcements so that they might be issued by the district office without being first referred to the central office."[17]

Changes in placement procedure were even more far-reaching. The Commission adopted a policy of decentralization, delegating its authority as much as possible to personnel officials of operating departments, as well as to its own district offices, and through the latter to local boards of examiners and special field representatives. It "stationed liaison officers and special representatives at the central offices and the more important field establishments of national-defense agencies, with full power to act for it or

[15] *58th Annual Report, United States Civil Service Commission*, 1941, p. 2.

[16] *Ibid.*, p. 3. A similar order was issued on March 26, 1917, under which some World War I appointments were made.

[17] *57th Annual Report, United States Civil Service Commission*, 1940, pp. 3–4.

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its district managers in handling many types of personnel transactions." In some cases the operating agencies also decentralized their procedures so that the Commission's field representatives and the agency's field appointing officers could take final action on field personnel transactions jointly.[18] The result was a speed-up in placement procedure to the point where personnel operations which formerly required weeks were now frequently completed within a few hours.

All of the changes described in the preceding paragraphs were effected within the framework of existing civil service rules. In a sense they constituted the answer of the Commission to the charge that it could not in an emergency recruit personnel fast enough to meet the needs of the government. At the same time, however, it was apparent that relaxed rules and streamlined procedures constituted a threat to centralized control over the selection process. The war agencies, although nominally under civil service, were in fact selecting much of their own personnel. Furthermore, the recruiting activities of the Commission were being duplicated by similar activities on the part of those operating agencies most in need of personnel.

This situation was changed, however, by an executive order of February 16, 1942, which authorized the Civil Service Commission "to adopt and prescribe such special procedures and regulations as it may determine to be necessary in connection with the recruitment, placement, and changes in status of personnel for all departments, independent establishments, and other Federal agencies, except positions in the field service of the postal establishment." The order further provided that persons appointed under its authority would not thereby acquire a classified (competitive) civil service status, but, in the discretion of the Civil Service Commission, might be retained for the duration of the war and for six months thereafter.[19]

Following the promulgation of this order, the Civil Service Commission adopted and put into effect a set of "War Service Regulations" making a number of changes in the civil service rules.[20] These regulations prohibit

[18] *58th Annual Report, United States Civil Service Commission*, 1941, p. 1.

[19] Executive Order No. 9063, *Federal Register*, Feb. 19, 1942. This order has no counterpart in the World War I period. The Civil Service Commission reported on November 14, 1918, that "notwithstanding the tremendous demand of the government service, the merit system of appointments has been fully maintained in all the older branches." It added, however, that "some new agencies have been permitted by executive orders to make appointments without reference to the registers of eligibles." *Thirty-fifth Annual Report of the United States Civil Service Commission*, 1918, p. II.

[20] See U. S. Civil Service Commission, *War Service Regulations;* also *Circular Letter 3608* and *Departmental Circular 323*. These regulations do not apply to attorney positions, since they are under the jurisdiction of the Board of Legal Examiners.

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all recruiting activities except those which have the prior approval of the Commission and are carried on under its direction. Each department and agency is required to report to the Commission at such intervals as may be prescribed its estimated future needs for personnel and to place a requisition for it as soon as the need becomes apparent.

Under the regulations, examinations may be either competitive or non-competitive. Maximum age limits are abolished except in cases "where the appointing officer establishes to the satisfaction of the Commission that the interests of sound administration require such limits for a particular position." In cases where the demand for qualified eligibles exceeds the supply, the Civil Service Commission may rate competitors as simply eligible or ineligible. Only in instances where the supply exceeds the demand over a considerable period of time must numerical ratings be assigned. In the case of unassembled examinations, numerical ratings are continued, but they are less refined, since they can end only in 2, 3, 5, or 8. In any event, selection from the list of eligibles furnished by the Commission may be made in any order except that, as at present, the names of veterans may not be passed over without reasons given in writing.

Appointments made under the new regulations are called "war service appointments," and are for the duration of the war and for six months thereafter. Appointees do not acquire a classified civil service status. For temporary appointments, which are for a period of one year or less, "it is unnecessary to use eligible lists if they do not appear entirely appropriate." Furthermore, there is to be no follow-up in the case of temporary appointments to see whether they have been terminated at the specified time "unless it becomes apparent that a check on a particular appointing officer is necessary." Finally, it may be noted that the apportionment rule is modified by exempting from it positions in the skilled and unskilled trades, as well as all positions for which the entrance salary is $1,440 or less per year.[21]

It is seen from what has been said that the principal changes made by the war service regulations are (1) the adoption of pass examinations for many classes of positions and (2) the limiting of appointments made as a result of these examinations to the duration of the present war. On the surface it might appear that these changes seriously weaken the merit system at a time when it should be strong and virile. At the same time, however, it should be borne in mind that the major purpose in simplifying procedure is to bring about maximum speed in the filling of war positions.

[21] Civil Service Rule VII, Sec. 3, provides in part that "certification for appointment in the departments or independent offices at Washington shall be so made as to maintain, as nearly as the conditions of good administration warrant, the apportionment of appointments among the several States and Territories and the District of Columbia upon the basis of population. . . . "

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If an inferior type of employee is appointed, it is because of a shortage of available manpower quite as much as because of a lowering of entrance standards. Furthermore, the appointment is not a permanent one, but is definitely limited to the duration of the war. Under such circumstances, there should be little doubt concerning the wisdom of the changes which have been made.

III. TRANSFERS

A third method by which personnel can be obtained for war agencies is by transfer of employees from other agencies whose work is not of a defense nature. Inter-organization transfers have in the past not been very numerous, due to various restrictions imposed by the civil service rules. The difficulties involved in transfer were further increased by an executive order of May 27, 1941, which directed the Civil Service Commission to refuse examination or certification to any person who at the time or within three months preceding was employed in a civilian capacity by any executive agency of the government unless that agency gave its written consent.[22] This order had the effect of "freezing" federal personnel by making it virtually impossible for one agency to draw employees from another unless the latter agreed to the transfer.[23]

The situation thus created was obviously favorable to those agencies which were not feeling the full effects of defense expansion. On the other hand, it was very unsatisfactory from the employee standpoint, as well as from the standpoint of those agencies which were in need of personnel. After war was declared on December 8, 1941, it became apparent that the shortage of civilian manpower in certain occupations which were essential to the defense program would become intensified. The order of the preceding May was accordingly modified by directing the Civil Service Commission to request the release of those employees found to be qualified to do war work and whose positions could be filled by the agency in which they were employed.[24]

Despite this modification in the original order, the situation remained unsatisfactory. Several agencies enforced what amounted to a blanket prohibition upon all transfers. A survey made in February, 1942, revealed that only about 8,000 federal employees had been transferred since the declaration of an unlimited national emergency in May, 1941. Since there were at the time, as already pointed out, only eight agencies which laid no claim to participation in the war effort, it seemed clear that little could be expected in the way of voluntary liberalization of transfer policies.

[22] Executive Order No. 8760; *Federal Register*, May 29, 1941.

[23] This is the policy followed during World War I, except that the "freezing" was done by statute. See Herman Feldman, *A Personnel Program for the Federal Civil Service*, p. 18.

[24] Executive Order No. 8973; *Federal Register*, Dec. 16, 1942.

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The result was an executive order directing the Bureau of the Budget to establish "priority classifications of the several executive departments and agencies, or of parts or activities thereof, in respect to their relative importance to the war program," which would be controlling in the matter of transfers. At the same time, the Civil Service Commission was authorized to secure information regarding employees who were competent to perform essential war work in departments or agencies having a higher priority classification, and, with the consent of the employee concerned, to transfer him to any department or agency with a higher priority classification. It was further provided that such transfers should become effective within ten days after notification unless the employing agency presented evidence to show that its work would be jeopardized by the loss of the employee, in which case the Civil Service Commission would make the final decision.[25]

Within a few days after the issuance of this order, the Bureau of the Budget announced the grouping of government agencies into five classes.[26] Class I, which includes those agencies most closely related to the war effort, consists of the Navy Department, the War Department (with the exception of civil functions performed by the Corps of Engineers), the War Production Board, the War Shipping Administration, the United States Maritime Commission, the Selective Service System, the White House Office, and the lease-lend activities of the Procurement Division and of the Surplus Marketing Administration. Among Class II agencies, which are of somewhat less importance to the war effort, are the Weather Bureau, the Federal Bureau of Investigation, the Office of Price Administration, the Office of Censorship, and the Foreign Service.

Class III agencies, of still less importance in the war program, include, for example, the Civil Service Commission (with the exception of the Retirement Division), the Bureau of the Budget, the Reconstruction Finance Corporation, the Federal Power Commission, the National Labor Relations Board, and the Agricultural Adjustment Administration. In Class IV were placed such agencies as the Patent Office, the Bureau of the Census, the National Resources Planning Board, the Federal Trade Commission, the National Mediation Board, and the Tariff Commission. Class V, which consists of those agencies that are of least importance in the war program, includes, among others, the Federal Deposit Insurance Corporation, the Work Projects Administration, the National Archives, the Securities and Exchange Commission, the General Accounting Office, the Veterans Administration, and the Post Office Department.

A notable feature of this classification is that it follows functional lines, even to the point of dividing bureau activities in many instances. Thus

[25] Executive Order No. 9067; *Ibid.*, Feb. 25, 1942.

[26] Budget Bureau, *Circular Letter No. 388.*

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the work of the Public Health Service is partly in Class III, partly in Class IV, and partly in Class V. The Immigration and Naturalization Service of the Department of Justice is in Class V, except as respects border patrol and alien registration, which are in Class III. Only two departments fall entirely in one class—the Navy Department, in Class I, and the Post Office Department, in Class V.

Following the establishment of this classification plan, the Civil Service Commission put into effect on March 16, 1942, revised transfer regulations.[27] These provided that employees who wished to transfer should file application with the Commission rather than with the agency to which they wanted to go. The various agencies, in turn, were required to place requisitions for personnel with the Commission, even in those cases in which it was known that the vacancies would be filled by transfer. Such requisitions, however, could state the name of the employee whose services were desired.

If the transfer was to an activity with a higher priority classification, it could be effected by the Civil Service Commission without the consent of the agency in which the person was employed. The employee's own consent, however, was required. On the other hand, it was necessary to have the approval of the agency in which the person was employed if the transfer was to an activity with the same or a lower classification. Under these regulations, approximately 32,000 transfers to war jobs were authorized.

Transfers remained on a voluntary basis until September 12, 1942, when President Roosevelt issued an executive order effective September 27, delegating complete authority over them to the War Manpower Commission. Two days later, the Commission issued a directive giving to the Civil Service Commission the power to authorize transfers "without the consent of the employee, of the department in which he is employed, or of the agency in which he is to be employed, whenever it finds that the transfer will result in a more effective contribution to the war program. . . . Employees are required to be given an opportunity to be heard by the commission before being transferred without their consent, and may not be transferred to a position carrying a lower salary than they are receiving." Likewise prohibited is "the transfer of employees beyond reasonable commuting distance from their homes unless the government defrays the transportation expenses of the employee and his immediate family and the cost of moving his household goods."[28] The Commission must, before transferring an employee, give his department an opportunity to present evidence that its work will be jeopardized by the proposed transfer.

Under the directive, the Civil Service Commission may also authorize

[27] These regulations apply also to attorneys, since they have been adopted by the Board of Legal Examiners.

[28] *Press Release*, Office of War Information, Sept. 14, 1942.

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the transfer of a government employee to a private industry engaged in war work whenever it finds the employee qualified to perform work in an occupation which is listed as critical by the U. S. Employment Service. Transfers to private industry cannot be made without the employee's consent, but may be ordered without the consent of the department in which he is serving.

The new transfer regulations establish, with some modifications, what may be called a selective service system for federal employees. Although they do not prevent an employee from resigning his position, they place him, while he is an employee, under virtually complete control by the government so far as relates to the utilization of his services. The Civil Service Commission is now in a position to give to the war agencies the cream of the crop so far as civilian personnel is concerned.

IV. USE OF STATE-SELECTED EMPLOYEES

The final method by which the personnel for war agencies has been secured is through the use of persons selected by the states. Although the U. S. Civil Service Commission has in the past coöperated in various ways with state personnel agencies, it lacked the authority prior to 1938 to certify eligibles from state registers to fill federal positions. In that year, however, the rules were amended to require it to render all practicable assistance to state and local agencies which requested its coöperation and to join in conducting examinations under such regulations as might be jointly agreed upon. The amendment further provided that "where the Commission has joined in the conduct of such examinations, it may certify eligibles from appropriate resulting registers to fill vacancies in the United States civil service."[29]

Despite this authorization, there appear to have been no joint examinations conducted, and therefore no use of state registers by the Commission. The principal reason is that, although there are undoubtedly many federal positions the duties of which are practically identical with those of positions in the state services, class titles and specifications are rarely ever the same.

This situation might well have continued but for the fact that the federal government on January 1, 1942, took over the operation of the approximately 1,500 state employment offices in the United States. Although the Social Security Board had previously coördinated the work of the various state services, it had exercised no control over personnel except to require that it be chosen under an approved merit system. Employees of the service were therefore state employees. This situation was changed, however, by an executive order of December 23, 1941, which authorized

[29] *Fifty-fifth Annual Report of the United States Civil Service Commission*, 1938, p. 50.

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the Federal Security Agency to appoint to a position in the Social Security Board any employee of a state employment agency who was required in the operation of the service by the federal government.[30] The order also provided that vacancies which occurred after the inauguration of federal operation might, with the concurrence of the Civil Service Commission, be filled from eligible lists prepared under the rules of a state merit system which had been previously approved by the Social Security Board.

The order, which affected approximately 20,000 state employees, was put into effect on January 1, 1942. Since the nationalization program did not include the unemployment compensation functions of the employment offices, these functions were left to be performed by the states with their own personnel. In other words, the persons who were inducted into the federal service included only those who were principally concerned with the administration of employment service activities as distinct from unemployment compensation work.

Absorption into the federal service was accomplished without qualifying examinations or reclassification, and at existing state salary rates. Appointees were given a probationary indefinite status with full civil service rights at the end of six months. Provisional and temporary employees were taken over on a "job employment" basis,[31] with no civil service rights except such as might be subsequently acquired by passing a necessary examination.

The Social Security Board assumed responsibility for insuring, so far as possible, that no state employee inducted into the federal service should suffer any impairment of retirement benefits, seniority privileges, or other rights acquired under state merit systems. Since this could not be guaranteed by federal action alone, the regional representatives of the Social Security Board were instructed to negotiate with the appropriate state personnel agencies for an agreement to grant indefinite leaves of absence without pay to persons inducted into the federal service, so that their return to state employment could be effected at the end of the emergency without impairment of their service records.

Federal operation of the U. S. Employment Service, as Mr. McNutt has said, provides "a direct administrative line straight from the Director of the United States Employment Service . . . through the twelve Regional

[30] Executive Order No. 8990; *Federal Register*, Dec. 25, 1941. Appointments were to be made subject to the following conditions: "(1) that such employee was on the rolls of the state employment security agency at the close of business December 31, 1941; (2) that he was previously approved for permanent or probational appointment, or within the six-months' period beginning January 1, 1942, becomes eligible for such appointment under the rules of a state merit system previously approved by the Social Security Board; and (3) that he satisfactorily completes a six-months' probationary period from the date of his induction into the Federal Service."

[31] See Civil Service Rule VIII, Sec. 4.

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Labor Supply Officers of the service, to the individual state and local offices."[32] It supplies the means by which centralized control has been established over the practices and procedures involved in the placement and transfer of workers in war industries. At the same time, however, the control under the existing set-up would not have been complete without a federalization of personnel. The order of December 23, 1941, makes federal employees out of 20,000 state employees as effectively as if selection in the first instance had been by the federal government, but at the same time makes it possible to return them to the states at the expiration of the war.

V. CONCLUSION

The additional civilian personnel needed for the war effort is being secured in four principal ways: (1) loan from industry, (2) a streamlined selection program, (3) transfer from positions in less vital activities, and (4) federalization of state-selected employees. None of these changes is designed to be permanent. They are emergency measures adopted at a time when speed is perhaps the most important factor in the entire selection process. In the final analysis, the task of securing the services of an adequate body of government employees is only a part of the larger problem of effectively mobilizing and utilizing the man-power of the nation in the prosecution of the war. If the changes which have been made contribute to this end, their wisdom is hardly open to question at the present time.

So far as the future is concerned, the results should be good. When the war is over, it ought to be comparatively easy to effect a return to normalcy. The first employees to be laid off because of a cessation of work will be those appointed for the duration of the war. Instead of the widespread uncertainty which prevailed among war workers generally after World War I was over,[33] there should be at the close of the present conflict no doubt regarding the termination of their employment on the part of those persons who were appointed after the new regulations went into effect. The question of who shall be retained and who shall be laid off has to this extent been determined in advance.

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[32] *Press Release*, Federal Security Agency, Dec. 19, 1941.

[33] See *Thirty-Sixth Annual Report of the United States Civil Service Commission*, 1919, pp. xix–xx.

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THE POLITICAL SCIENTIST AND NATIONAL SERVICE IN WAR-TIME

REPORT OF THE COMMITTEE ON WAR-TIME SERVICES OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION*

This is a time when the nation expects every man to do his duty. The first duty of a learned profession is to determine how its members can be of greatest usefulness. This report is intended to be an analysis of possible and proper contributions which political scientists may make to the national effort. For the most part, it suggests ways and means to the individual; it makes few recommendations for action by the Association.

This report examines the opportunities for public service which are available to political scientists in the following fields of activity: (1) in public employment; (2) in undertaking tasks for the federal government; (3) in undertaking needed research; (4) in training persons for the public service; (5) in advancing public understanding of war-time and post-war problems; and (6) in strengthening democratic institutions and ways. Much of what is said on each of these subjects will be applicable to other social sciences and to colleges and universities as a whole.

I. EMPLOYMENT IN THE PUBLIC SERVICE

Employment by the federal government during the war is viewed by many people as tangible evidence that the individual so employed is actively associated in the major undertaking of the nation. There is consequently a great deal of interest on the part of political scientists in the opportunities for their employment in the federal service at this time.

* The Committee on War-time Services was appointed by President William Anderson in response to a resolution adopted by the American Political Science Association at its annual meeting in December, 1941. This resolution charged the President of the Association with taking steps, by creation of a committee or by other means, "to ascertain what efforts should be made, and to take such action as seems desirable, to make the resources of the United States represented by special training and knowledge in political science effectively available to the people of the United States" during the present war. The charge of the Committee gave it considerable discretion in determining the scope and nature of its inquiry, and the Committee decided, after consultation with persons in other disciplines, to give consideration to any phase of college and university activity that seemed relevant to its immediate assignment.

The Committee held a number of conferences to which members of various social science professions and representatives of government departments and agencies were invited. By means of these, and by means of contacts of individual members of the Committee, a wide range of experience and interest was explored.

Members of the committee were: Merle Fainsod, Office of Price Administration; Ernest S. Griffith, Library of Congress; William C. Jones, University of Oregon; Robert D. Leigh, Federal Communications Commission; Kirk H. Porter, University of Iowa; Herman Walker, Jr., Department of Agriculture; and Charles S. Hyneman (*chairman*), Bureau of the Budget.

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Recent years have seen a marked rise in the value placed on formal training in government and politics as preparation for certain positions in the public service. Job descriptions and civil service examinations for certain beginning positions have been revised to pay a gratifying, if not a flattering, tribute to the political science curriculum. For jobs in the higher brackets, however, the political scientist has not so successfully sold himself to recruiting and appointing officials. There are, roughly described, four types of positions in the federal service for which the mature student and teacher of political science might be supposed to be especially fitted: research work, administrative and executive work, service in an advisory capacity, and organizing work.

(*a*) *Research.* The political scientist is in sharp competition with other social scientists for appointment to research positions in the federal service. Inquiry reveals that few departments indicate "political science" as a necessary, or even a highly desired, background of knowledge for any of their research positions. Departments that do list political science as a principal requirement have very few positions for which it is specified. In a great proportion of the instances where political science is specified as an acceptable background for a position, economics or law is also specified and is usually preferred; consequently, the appointment is much more likely to go to an economist or a lawyer than to a political scientist.

There are, of course, exceptions to the rule. The political scientist who has trained himself in public opinion analysis enjoys an advantage in the competition for certain positions that is equalled only by the social psychologist. For positions involving research into problems of administrative organization and management, the political scientist with a public administration emphasis is definitely desirable. Where knowledge of foregin systems of government, international law, or national policies on foreign affairs is needed, men and women trained in those fields of political science have a good chance of employment.

It must be emphasized, however, that the number of research positions for which training in political science is specified is relatively very small indeed, and apparently not growing at any remarkable rate. The failure of the political scientist to compete more successfully for recognition in the description of positions or in appointments seems to be due mainly to the following:

First, persons who control federal employment do not know what political science is. Business men, and men recruited from other non-academic pursuits, are pretty sure to know what an economist talks and writes about (they may have majored in economics or commerce in college days), but "political science" does not sound to them like anything that a man is better off for having studied.

Second, knowledge of statistical method is useful, if not essential, in most governmental research positions, and the economists have incorporated

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statistics into their training much more universally and much more intensely than have political scientists.

Third, the individual is likely to be valued for governmental research only if he has familiarity with a functional field. The Interstate Commerce Commission wants an economist who knows the transportation industry or the problems of some other business which it regulates; the Securities and Exchange Commission hires research men who know corporate practices; the Department of Agriculture wants an economist who has a feel for the farmers' problems. What does the political scientist know about any of the problems or situations which government is created to deal with? Unless he does have intimate knowledge of the things which determine the program of the governmental agency, why should it hire him to do research? There are areas of governmental action in which the political scientist is at home, but they are not numerous.

Very closely akin to this is a *fourth* reason why political scientists have difficulty in getting into federal research jobs. Too few political scientists have got around enough to make themselves attractive to operating chiefs. Appointing officers prefer men who have demonstrated their prowess off the campus. If they want an economist, they want one who has done an extensive marketing survey, or counselled in the reorganization of a corporation, or done some other job that evidences ability to draw from the hot welter of human affairs facts and conclusions that support decisions on public policy. If the political scientist wants to be employed in a research job related to development of federal fiscal policy, federal housing policy, or any other policy with which he may be supposed to have special familiarity, he would better be able to show that he has worked successfully with the raw materials from which such policies are made.

Too often the economist and the lawyer can show such experience and the political scientist cannot. For every political scientist who has helped a department of state government build or destroy a trade barrier, there is at least one economist who has done the same and half a dozen economists who have advised trucking companies or other commercial firms concerning their trade barrier problems. As a consequence, the federal agencies that are at this moment grappling with interstate transportation difficulties are clamoring for economists and showing little interest in political scientists—such is the testimony of political scientists currently engaged in recruitment in Washington.

For these, and no doubt for other reasons, the economists and the lawyers are in on the ground floor so far as federal research work is concerned. Naturally, they value their kind of training, and naturally they press for men trained as they were in making appointments.[1]

[1] If this account of the "demand" for political science training in federal research positions errs, it is undoubtedly in that it pictures the situation too favorably for the political scientist. Writing in 1940, Lewis B. Sims, then with the Bureau of the Cen-

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(*b*) *Administrative and executive work.* The college professor has one special qualification for responsible administrative and executive work which men in most other professions and pursuits cannot show. He is supposed to be neutral in respect to the principal interests struggling to control public policy. The political science professor enjoys, on this score, no particular advantage over the professor of law or the professor of economics, and the evidence is that both of the latter do rather better than he in capturing such positions. There is a supposition on the part of some members of the political science profession that to have taught public administration is to have proved competence for administrative or executive work. That notion enjoys no widespread acceptance in Washington. To have been dean of a college may be accepted as demonstration of executive capacity; to have organized a league of municipalities, sat on the state unemployment compensation board, or served a term as commissioner of public safety—such experiences (assuming minimum personality qualifications and freedom from indictment) confer an enormous advantage in seeking federal employment, and if combined with some reputation as a teacher of public administration, will virtually guarantee a job on the present market.

Recent years have seen a remarkable increase in the number of positions involving duties loosely described as administrative management, organization planning, procedures development, and so on. For these positions, training in political science with emphasis on public administration is excellent background and recognized as such by those who write job descriptions and make appointments. Some of these assignments involve analysis of broad policies and survey of general relationships between working units. At such a task, a mature student or teacher of public administration, familiar with the policy area involved, may give a very good account of himself; even so, he is likely to be better appreciated if he has previously rubbed shoulders with organizational problems. But most assignments in analysis, planning, and development of organization, policies, and procedures are not concerned solely, or even mainly, with examination

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sus, said: "Under present conditions, there is hardly a position in the federal civil service that the professional political scientist *per se* can fill. It is almost inconceivable at the present time that an appointing officer, in one of the social or economic agencies in Washington, should call upon the Civil Service Commission for a 'political scientist.' . . . The pure political scientist, if he is looking for a career in the federal government, needs a new federal government! There is no place for him as such—or practically none." C. J. Friedrich and E. S. Mason, eds., *Public Policy* (Harvard University Press, 1940), pp. 288–289, 293. Since Sims wrote, the war-time scarcity of man-power has led to greater employment of political scientists, but even so the chief of the Civil Service Commission's unit charged with placement of economists, political scientists, and statisticians states emphatically that the above quoted remarks "are still essentially true."

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of broad policies and general relationships. More workaday about-the-shop problems are involved, and the job can be done satisfactorily only by a person who has been close to government in operation. Scarcity of men and the mushrooming of government organizations as the war goes on may combine to force the acceptance of purely academic men for such positions. As yet, however, the teacher of political science, even though his specialty be public administration, has little ground for expecting employment in this field unless he can show a record of practical experience.

(*c*) *Service in advisory capacity.* As the making of public policy is vested to greater and greater degree in administrative departments and agencies, there is increasing employment of men who give a major part of their time and effort to shaping public policy. When men are brought into an organization because of their value in advising on policy, they are likely to be attached to a position that has major duties of a research or administrative character. If research, what was said above about that kind of position applies fully here; if administrative or executive, what was said on that subject also applies. The likelihood that the political scientist will be employed to advise on the making of public policy depends very much on his ability to show a background of knowledge and experience which the appointing officer considers "practical."

(*d*) *Organizing work.* In peace-time, the federal government spends a great deal of money on efforts to get the people interested in this or concerned to do that. In war-time, these activities are greatly expanded and sharply accelerated—through an Office of Facts and Figures, a Coördinator of Inter-American Affairs, an Office of Civilian Defense, and so on. To get the results in thinking and activity that are desired, there are a good many people on the pay-roll, engaged in what is here called "organizing work."

For this kind of task, the college professor has a special fitness. He is accustomed to dealing with people in groups, although they may be small groups, young people, and caught in a setting which makes them easy to manage. Even so, this is experience which promises some fitness for maneuvering people on a larger scale, and there is evidence that the college professor is received with reasonable favor when these positions are filled. Newspaper men, public welfare workers, and trade association secretaries may be preferred, but if the professor can show both special knowledge of the program which the governmental agency wants to accomplish and some experience in conducting forums, organizing extension work, developing short courses, or in similar off-campus activity involving work with adult groups, he will compete on equal terms with men in all other professions and pursuits.

Employment in state and local public service. The Committee has given

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no particular attention to this problem. Members of the political science profession, devoted as they are to the study of public affairs, are no doubt informed concerning needs in their states and localities for the kind of knowledge and skill which the political scientist has, and the likelihood that administrative officers and politicians can be induced to recognize those needs. The committee wishes only to urge upon the profession a realization that service in state and local government may prove fully as important to the nation, even when it is at war, as any service which the political scientist is likely to render in federal employment. Indeed, it may be that the scarcity of competent people at this time opens a way for such an infiltration of political scientists into state and local public service as will affect a significant regeneration of democratic government where it lies closest to the people.

Recommendations in respect to public employment. The committee assumes that members of the political science profession want men and women of their kind to find places in the public service where their knowledge and training will influence public policy. The committee assumes further, therefore, that the profession is concerned to see an accelerated movement of political scientists into public employment during this war, during the immediate post-war period, and during any other time when the nation is confronted by crisis. Influenced by these assumptions, *the Committee recommends that the members of the Executive Council of the Association who reside in Washington be designated by the President of the Association as a committee to concern itself with this problem.* To this group, the President may wish to add other persons.[2]

The present committee is reluctant to suggest what the proposed committee ought to do. Possibly it could perform a valuable service in advising federal recruitment and placement officers as to where individuals may be found who possess needed combinations of knowledge in political science. It is not intended to suggest that the Association's committee should become an active recruitment or placement agency. It must be recognized, however, that practically every prominent social scientist in Washington gets frequent calls for advice on the quality of persons within his acquaintance. Such advice as is given is certainly irresponsible in any institutional sense; it is likely to be unfair to persons who are unknown to the one passing judgment; and it may be of little value, since it is frequently given on the spur of the moment and without opportunity for reflection. A committee should be able to perform this task much more satisfactorily than it is now being performed.

It is possible that the committee might undertake some action to secure a more favorable employment situation for students and teachers of politi-

[2] Such a committee has been formed and is under the chairmanship of Marshall E. Dimock.

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cal science. Some of the departments and agencies might find that they have places for which the student of political science is especially suited if they once had called to their attention what the political scientist is trained to do. Perhaps, if the desirability of doing so were called to its attention, the Civil Service Commission would urge appointing officers to reëxamine their jobs with a view to more adequate utilization of men and women trained in political science. Undoubtedly, there is much that the committee can do, directly or indirectly, to advance the employment of political scientists without embarrassment to the Association or its members.

II. UNDERTAKING TASKS FOR THE FEDERAL GOVERNMENT

The activities of the federal government penetrate to every community of the nation. Some of its work is carried out on college and university campuses—the agricultural experiment station affords a familiar example. Since the country embarked on its defense program some two and one-half years ago, a great deal of scientific work has been farmed out; the Office of Scientific Research and Development has made a great number of research assignments, and these projects are under way in a number of college and university laboratories.

The Committee sought, by conferences with a number of federal agencies, to determine the likelihood that jobs requiring the services of social science groups would be farmed out. The conclusions are, first, that a number of departments have work to be done which can be assigned, but second, that they are not likely to make such assignments unless someone encourages them to do so and helps work out specific projects.

The Office of Facts and Figures, before it was absorbed into the Office of War Information, was seriously considering the establishment of opinion and attitude study centers on college and university campuses, and it may be that this idea will be carried into operation in the near future. The Office of Defense Health and Welfare Services, it now appears, will be charged with surveying communities and making plans for the reception of persons who may be evacuated from centers under attack. Without doubt, carefully selected groups of faculty people, competent to evaluate water supply, housing capacity, educational facilities, and other essentials to the reception of incomers, could be of great assistance in determining the suitability or unsuitability of particular areas for this purpose. In organizing faculty groups for such service, political scientists could well take the lead.

A great number of federal agencies are interested in the fruits of social science research. The National Resources Planning Board is just now completing a survey of the kinds of research jobs which are being contracted out, and the frequency with which this occurs. It appears that in some

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instances college professors have been retained to work at home on subjects specified by a federal department, but that this has not happened very often. Unless some special effort is made to encourage departments to do this sort of thing, they are much more likely to put the professor on the pay-roll and bring him to Washington to do the job.

It would be possible, and no doubt feasible, to employ college and university men to study and report critically on the organization and functioning of federal agencies in the field. Thus, the Office of Price Administration might invite a faculty man, or a group of faculty men, to report on the behavior of local rationing boards, or on public attitudes toward administration of price regulation. Inquiry indicates that federal agencies are not likely to extend such invitations unless someone makes a considerable effort to stimulate them to do so.

The Committee has considered the advisability of urging that an office or agency be set up in Washington to stimulate the farming out of work. This might be a federal office, comparable to the Office of Scientific Research and Development; it might be a special arm of the Social Science Research Council; it might be a committee or officer of the American Political Science Association. The Committee has also considered the advisability of recommending an organization of university and college people which would make sure that requests for assistance would be responsibly considered and assigned. The Committee has decided, however, to make no recommendation on either point. This is in part because the Committee is uncertain that the results of such an undertaking would justify the effort; in part, because the Committee believes that the National Resources Planning Board, which is now completing a study of the farming-out process, is in a much better position to make recommendations for organization and action. If, as recommended above, the Association sets up a permanent committee resident in Washington, that committee should give further thought to this question.

But the lack of an intermediary will not keep imaginative and thoughtful individuals from establishing contact with governmental agencies. Undoubtedly one of the best ways for people who are in the educational institutions to extend their services and their influence beyond the campus at this time is to ally themselves with the state or local defense council. Some college and university groups have done this; the University of California's Bureau of Public Administration is a notable example. If members of the faculty have established a record of service throughout the state, they should have prestige which would guarantee an instant welcome for their services. State and local defense councils are planning boards in embryo, and if planning-minded faculty people will organize themselves into a research unit and attach themselves to a council, they should be able to turn its activities from futile makeshift to fruitful planning.

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There are also federal, state, and local agencies with express legal obligation to carry on research and planning activities. Faculty people, along with other men and women of scholarly inclinations, can be of great assistance to such establishments. The University of Denver, for instance, has a working agreement with the regional office of the National Resources Planning Board whereby it supplies a much-needed leadership in the study of problems of concern to the Rocky Mountain area. For several years, the Bureau of Municipal Research of the University of Oregon had a formal agreement with the state planning board whereby it served the latter by carrying on investigations in fields of public administration and public finance.

Research and planning are major activities of many official establishments which have no such words in their titles. The Federal Security Agency, the Office of Defense Health and Welfare Services, the Office of Defense Transportation, the National Housing Agency, the state, county, and city departments of health—all of these and half a hundred more departments and offices are overwhelmed with planning problems presented by war boom towns and the migration of workers and families. Not one of these agencies is so adequately staffed that it has no use for specialists who have a feel for the local setting. In many instances, individual faculty men, or groups of faculty men, have supplied the most realistic thinking that has been brought to bear on these war-time problems of their states and localities.

Speaking generally, no persons on a college or university campus are expected to have as universal a knowledge of the relationships between government and community problems as the political scientist. It is surely not extreme to say that the political scientist has a special obligation to inform his college or university officials and staff of the ways in which they can properly coöperate with public officials in the solution of pressing public problems. Is it expecting too much to urge that political scientists take it upon themselves to see that their respective institutions (especially state universities) maintain a constant service, in research and other aids, to at least the principal planning agencies within their areas of influence—the community, the state, or the region?

III. UNDERTAKING NEEDED RESEARCH

The primary task of the political science profession, other than that of teaching young people, is to provide specialized thinking on public affairs. The nation never needed that service more than it does right now. The Committee is firmly of the opinion that the great majority of political scientists can find no better way to serve the country than by carrying on systematic inquiry and disciplined thinking upon the more critical issues that face the country.

The Committee supposes that the political science profession is likely

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to continue its scholarly work in a pattern of individualism, and that the best assurance of a timely product lies in the initiative of the individual members of the profession. Imaginative students of public affairs will have no difficulty in identifying some of the institutions and ways that are in danger of distortion or liquidation during this decade or generation, and students possessing initiative will tackle these problems whether urged to do so or not. We have not yet stated adequately what it is that we call democracy; we have not yet determined what elements or parts of the democratic structure we count indispensable and not to be yielded; we have not yet projected courses of action calculated to assure the retention or continuation of these indispensable and not-to-be-yielded things. Our efforts to win the war may greatly alter or even destroy the federal system. The political scientist has an obligation to advise the makers of policy as to what is lost when federalism is lost, and to give them wise counsel as to the probable consequences of various substitutes for the federalism we have known in the past. While war-time organization and programs launch the nation on a course that, accepted, may prove the foundation of a socialist state, or rejected in violence, may shove the nation back into decades of effort to solve its social problems without planning or control—while these organizations and programs are being developed—the political scientist must not sit silent and uncritical.

It seems to the Committee that the customary individualism of the profession is a luxury that cannot be maintained unimpaired in war-time; political scientists must not go through the war with a business-as-usual attitude toward research and critical writing. The crises upon the nation and awaiting the nation demand that the profession recognize priorities in its scholarly work, and that it be prepared for allocation of projects. How can the profession be guided into its greatest usefulness? Students, mature and immature, should know what men of affairs consider to be the more crucial issues; students should be told what others are doing, so that projects can be fitted to one another and duplication of effort can be avoided where it is not needed; steps should be taken to make sure that the fruits of research and thinking will come forcefully to the attention of people who determine public policy.

The Committee on Research of the American Political Science Association is undertaking to point the way to a more fruitful attack on crucial issues than the general body of the profession has heretofore achieved. The committees on Government and Public Administration of the Social Science Research Council have the same objective. It may be that one or the other of these committees, or the three of them collectively, will supply the profession with the leadership that is needed, but this will be so only if the members commit themselves to an aggressive rôle. The present committee does not ask that the profession go into politics, seeking to force

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particular policies upon public officials; it does ask, however, that the profession be given leadership in determining what to do, and that it be given assurance that the results of painstaking work will be laid before public officials and leaders in a language that they understand and under circumstances that command attention.

IV. TRAINING FOR THE PUBLIC SERVICE

The first section of this report should have made it clear that something more than the customary political science curriculum is needed if ready ingress to the federal service is to be provided for undergraduate and graduate students. Much more acutely needed than pre-service training at this time is training for persons already in the federal service. Certainly state and local public service will bear improvement and may be expected to respond to training efforts if properly instituted and intelligently applied. All these needs are fruitful fields for cultivation by the political scientist who approaches the problem of training eagerly and with intelligence.

Concerning the preparation of young people for entry into the federal service, the Committee will say only that the market for young women and for young men who are draft-free is open as it never was before, that essential to any training program is provision of at least a little experience that appointing officers will call practical, and that there is an excellent guide for the development of pre-service training in print and easily available (i.e., G. A. Graham, *Education for Public Administration*, Chicago, 1941).

The enormous expansion of the public service since the institution of the national defense program, connected with the loss of experienced federal servants to the armed services, has created a sharp and pressing need for training men who are already on the job. This task is primarily the responsibility of the agency that employs them, but the responsibilities of department management officers are such at this time that they are not likely to approach their training problems as quickly, as comprehensively, or as intensively as one would wish, unless they are given encouragement and assistance by outside groups.

The ESMDT program by which short courses in welding, motor construction and repair, and a hundred other subjects are now being provided by colleges and universities offers a pattern which might be adopted for training persons in clerical, supervisory, and management jobs.[3] Indeed an unsuccessful effort was made this summer to enlarge the legislative

[3] The Engineering, Science, Management Defense Training Program (ESMDT) calls for the federal government, through the Office of Education, to reimburse colleges and universities for the costs incurred in providing short courses in certain specified fields of skill and knowledge.

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authorization to permit the U. S. Office of Education to reimburse colleges and universities for costs incurred in providing short course training for "federal management personnel."

Even though this effort to provide federal financial aid failed, the opportunity for service continues, and it is a service that can be provided by many colleges and universities at only nominal cost. A reasonable amount of cultivation of federal management in the locality should yield a guarantee that instructors will be supplied and employees will be freed for study in evening courses or in full-time courses lasting a couple of weeks or less.

If the political scientist is interested only in training which he can provide himself—principles of public administration, personnel management, budget-making—he may get no takers for his wares because of doubt on the part of federal management officials that the professor knows enough that is of practical value. But if the political scientist will join his knowledge of federal training needs to the knowledge which the director of extension and others have of the institution's capacity to give training, then he may hope to see improvement of the federal service result from his efforts—an improvement, indeed, that will extend into many areas of activity in which he personally has no competence to instruct.

The Washington committee of the Association (recommended above), or the Committee on Public Administration of the Social Science Research Council, could render valuable assistance to educational institutions by informing them of critical training needs and advising them concerning the improvement of training curricula.

There is surely little that the Committee can say about the improvement of state and local public service through training. If the political scientist has been an active participant in or intimate observer of the government close about him, he will know how to find out where need for training is most acute and how to persuade the proper persons to recognize the importance of doing something to improve employee performance. If the political scientist does not know these things, then his first acts must be to get acquainted with the people who manage the public business in his state and community and give them reason to have confidence in his objectives and his ability.

One further suggestion the Committee would make—that efforts of college and university people to improve the public service through training will not flourish in the midst of professional and institutional jealousy. If the political science department intends to jockey the commerce school out of influence (or vice versa), the training program will certainly be of limited value and probably of short life. If one institution tries to get a monopoly on training in the area, it will probably lose face with its clients. The forthright way to proceed in planning an honest attack on the in-

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service training problem, whether for federal, state, or local government, would surely be to draw in representatives of various disciplines and various institutions of higher learning and establish a common pool of the abilities that are likely to be called into play.

V. ADVANCING PUBLIC UNDERSTANDING OF WAR AND POST-WAR PROBLEMS

The principal function of the political scientist is to advance understanding by investigating, writing, and teaching. His principal forum is the classroom. There is need now that he enlarge his audience.

There are many organized efforts to advance public understanding of war and post-war problems, and the political scientist may find it advantageous to join in any one, or more than one, of them. The Army is conducting programs to improve the soldiers' understanding of national war policy and the impact of war on society. Faculty people are used as lecturers. The U. S. Department of Labor, the Federal Works Agency, and the Office of Education are jointly engaged with the National Foundation for Education in American Citizenship in a program for education of prospective citizens. The Office of Education sponsors a School and Civilian Morale Service through which a great many colleges and universities have developed comprehensive programs for improving general understanding of war and post-war issues. The Northern Illinois State Teachers' College is one example of a small institution that has done an outstanding job of passing on the faculty man's knowledge and organizing ability to the leaders of the surrounding territory. The Universities of Colorado, Minnesota, and North Carolina afford other illustrations of aggressive leadership provided under the cloak of the Civilian Morale Service.

The foregoing are a few programs for adult education which have the official support of federal government agencies. There are other programs of nation-wide impact backed by private organizations with which the individual faculty member may associate himself. But any educational institution can have an off-campus educational program of its own, and each faculty man can have his own sphere of influence.

The Committee does not wish to lay down any pattern for education of the nation to the new world that is upon it. It wishes merely to state again, as it has earlier in this report, that the obligation of the political science profession is to supply specialized thinking upon public affairs, and to release that thought through media that will bring it to the attention of those who make public policy. In our system of government, the state of the public mind is highly determinative of public policy, and the political scientist should not be content until he knows that the fruit of his inquiry and analysis filters to the man in the street without loss of its integrity. Whether the political scientist shall organize forums, go on the

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air, speak before women's clubs, or write for the papers is a matter for individuals to determine.

This is not an exhortation for the political scientist to turn preacher. It is rather a challenge for him to distinguish fact from fancy and proof from wish as never before. If the college professor, talking in the community where he lives and is known, cannot speak forcefully about the issues that confront the country, where are we to find any semblance of freedom of speech? If the college professor will not announce his beliefs and identify them as beliefs rather than proved facts, how can we ask the politician to deal honestly with the people? If the college professor will not plunge into community life and join the discussion of the things that challenge the existence of the community, what right have we to expect others to do so?

VI. STRENGTHENING DEMOCRATIC INSTITUTIONS AND WAYS

Popular satisfaction with the conduct of government is the best assurance that democratic government will persist in the United States. This report has been concerned throughout with matters related to the strengthening of democratic institutions and ways, but there remain a few more things to be said.

Democracy involves an organization of the people which enables them to discuss issues in groups, thereby developing confidences which enable some to lead and make others content to follow. Who is to identify the leaders and potential leaders of the community and bring them together so that they may establish their claims to the confidence of one another and come to common agreement as to what issues are worthy of joint attack? Is this not a proper function of the college or university, which is relatively neutral among the issues that struggle for public adoption, and therefore is an acceptable meeting-ground for leaders who are not sure whether they are friends or enemies on the point at issue?

We constantly complain that our political leaders are decades behind in their analysis of public problems. We constantly complain that our political leaders are fearful about adopting a proposition until gossip in the street proves that it is respectable. But what do we do to see that at least some of our leaders are abreast of our best knowledge? What do we do to win the confidence of some of our leaders so that we may give respectability to the novel idea and make it a safe product for them to sell in the public forum? Are these not proper things for the faculty man to do, devoted as he is to democracy and willing to make some personal sacrifice to increase the likelihood that it will work?

Again the Committee is reluctant to make suggestions, believing that the imagination of individuals will guide them to the best ways of accomplishing purposes that support the democratic end. One may promote or establish a journal that deals with the public affairs of his state and the

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communities of his state in such a way as to build a common understanding of what is being done and needs to be done. Another will organize conferences at which leaders rise in understanding of their opportunities and responsibilities and grow in courage to meet them. A third will be content to serve as intimate counsel to one or more persons influential in public affairs. The Committee is only concerned that political scientists bear in mind that democracy will not work unless people are resolved to make it work, and that the war is not won unless the continuation of our democratic ways is assured.

* * * * *

This war will not be fought and won in Washington alone, nor will the peace that is to follow. Least of all will it be won by devices which drag every possible professor of political science into the District of Columbia where he will be fortunate to find a bed in which to sleep, a desk at which to work, and a task that challenges his training and ability. At home, as well as in Washington, there is war work aplenty, and it is work for which the political scientist is fitted and which he can tackle in the environment where he achieves his greatest effectiveness. No student or teacher of politics who is loyal to his country and an honor to his profession will shrink from these undramatic but necessary tasks, even though some of his colleagues have managed for themselves a more glamorous setting in the nation's capital.

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NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

Thirty-eighth Annual Meeting of the American Political Science Association. The problems of government in war-time will occupy a major part of the program of the thirty-eighth annual meeting of the American Political Science Association. The meeting will give public officials—among them several hundred former professors and instructors in political science and members of the Association—an opportunity to discuss with their college and university colleagues the urgent problems of policy and administration in our war-time government and the various plans that are being considered for the post-war world.

The meeting will be held in Chicago, December 28–30, in conjunction with the meeting of the American Society for Public Administration on December 27–28. Several joint sessions of the two societies will be held on December 28. As in former annual meetings, the programs of both societies will include both governmental officials and teachers and researchers in the fields of public opinion, public policy, law, international relations, and administration.

A number of members of the Association have inquired whether the annual meeting should not be cancelled in view of transportation difficulties. This question has been discussed by the President of the Association, the Secretary-Treasurer, the Chairman of the Program Committee, and the Editor of the REVIEW, who have sought the advice of leading public officials and officers of comparable associations. While the Office of Defense Transportation is discouraging large conventions held for social or entertainment purposes, no opposition whatever has been expressed to meetings which bring together those concerned with public affairs for the discussion of governmental policy and administration. On the contrary, meetings which afford opportunity for students of government and public officials to confer are looked upon as essential conferences and useful in the furtherance of the war effort. The officers of the Association are assured that they will be informed if the situation should change so radically that the Association's meeting would impair the war effort. In such a case, the meeting would be cancelled immediately and all members of the Association would be notified at once in writing.

On December 28, the birthday of Woodrow Wilson, who was president of the American Political Science Association in 1910, two general sessions of special interest will be held. Arrangements have been made for a luncheon session, to be held jointly with the Woodrow Wilson Foundation and the American Society for Public Administration, at which a nationally known speaker will appear. The presidential addresses of the American

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Political Science Association and the American Society for Public Administration will be given on the evening of December 28.

In general, the program of the meeting will be as outlined in the August issue of the REVIEW (pp. 717–719). The headquarters will be at the Sherman Hotel.

In accordance with a procedure introduced two years ago, the nominating committee of the American Political Science Association has canvassed the membership for suggestions for nominations for officers for 1943, and at the December meeting it will offer the following list of nominees: president, Robert E. Cushman (Cornell University); first vice-president, John M. Gaus (University of Wisconsin); second vice president, Peter H. Odegard (Amherst College); third vice-president, Denna F. Fleming (Vanderbilt University); secretary-treasurer, Kenneth Colegrove (Northwestern University); assistant secretary-treasurer, Harvey Walker (Ohio State University); members of the Executive Council: Clyde Eagleton (New York University); Charles Fairman (Stanford University); V. O. Key, Jr. (Johns Hopkins University); Amry Vandenbosch (University of Kentucky); and Harold Zink (De Pauw University). The nominating committee consists of Charles M. Kneier (chairman), Alfred B. Butts, Charles G. Haines, Robert R. Wilson, and Benjamin F. Wright.

Suggestions or proposals from members of the American Political Science Association relating to revision of the Association's constitution and by-laws will be welcomed by the committee now working on the subject. They should be addressed to the chairman, Professor Robert E. Cushman, of Cornell University.

At the University of Chicago, Professor Charles E. Merriam has been appointed on the Walgreen Foundation to give his course on American political theory in the spring quarter of 1943.

Professor Herman Finer, who taught at the University of Chicago during the winter and spring quarters, 1942, has accepted an appointment on the staff of the International Labor Office and is stationed in Montreal.

At the University of Michigan, the leave of Professor J. R. Hayden has been extended for another year in order that he may continue in the Office of Strategic Services in Washington.

Professor William P. Maddox, of the University of Pennsylvania, has accepted an assignment with the Office of Strategic Services and is now attached to the U. S. Embassy in London.

Professor Floyd W. Reeves, formerly on leave from the University of Chicago, has returned for part-time work during the present academic year. He, however, continues his connection with the National Resources Planning Board.

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Professor Charles M. Kneier, of the University of Illinois, served during the summer as a member of the staff of the War Relocation Authority in the capacity of consultant on the local government of relocation centers.

Professor Ethan P. Allen, of the State University of Iowa, has been granted leave of absence for one year to assume a position as senior business adviser in the Office of Civilian Defense at Washington.

At the University of California at Los Angeles, Professor H. Arthur Steiner will serve as chairman of the department of political science until Professor J. A. C. Grant's return from Mexico in February. Dr. Russell H. Fitzgibbon has been promoted to an associate professorship.

Dr. James J. Robbins, associate professor at the American University, has been appointed dean of the Graduate Division in the School of Social Sciences and Public Affairs.

Sessions of a Harvard-Princeton Conference on Public Policy in Education, held in Cambridge during July, were presided over by Professors William S. Carpenter and John F. Sly, of Princeton.

Dr. Richard C. Spencer, formerly of the Municipal Finance Section of the Division of Research and Statistics in the Work Projects Administration, transferred early in July to the Planning and Analysis Section of the Division of State and Local Government in the U. S. Bureau of the Census.

Mr. Albert Lepawsky, director of the Institute of Public Service at the University of Chicago, has been granted a leave of absence for the duraton of the war and has accepted a commission as captain in the Army Air Corps. After four weeks of training at Miami, he was assigned to Washington.

At the University of Michigan, Mr. Esson M. Gale, has been appointed acting Orin O. Murfin professor of political science and will give courses on Far Eastern affairs in place of Professor Joseph R. Hayden. Drs. Lionel H. Laing, formerly of the College of William and Mary, and Wolfgang H. Kraus, formerly of Smith College, have been appointed assistant professors to fill vacancies created by the absence of Professors Harlow J. Heneman and Lawrence Preuss.

Dr. Howard Penniman, a member of the department of political science at the University of Alabama during the past academic year, has accepted an instructorship in government at Yale University.

Professor B. A. Arneson, of Ohio Wesleyan University, spent the summer in Washington as review and negotiations officer in the U. S. Civil Service Commission.

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War-time vacancies at the University of Wisconsin have been filled for the current year by the appointment of Professors J. B. Shannon, of the University of Kentucky, and David Fellman, of the University of Nebraska, as visiting lecturers.

Mr. Marion W. Boggs, recently associate professor of political science at Macalester College (St. Paul), has joined the staff of the Division of Special Research, Department of State.

Dr. Charles P. Harper has resigned as instructor at Glenville State Teachers College to accept a position as first state supervisor of occupational information and guidance for West Virginia.

Dr. C. Leroy Stephens, of Ohio State University, has been appointed annual instructor in the department of government at Harvard University for the present academic year.

Dr. Heinze Guradze has been appointed assistant professor of political science at Park College, Parkville, Mo.

Dr. Shepherd L. Witman, of the University of Omaha, has accepted an assistant professorship at New Jersey College for Women, Rutgers University.

During the recent summer session, Professor Clyde Eagleton, of New York University, was a visiting lecturer in the department of government at the University of New Mexico. Dr. Thomas C. Donnelly, head of the department of government, has taken leave for the year to serve as state consumers' relations officer for the OPA.

Professor A. T. Edelman has been recalled to military service from the University of Kentucky and, with the rank of captain, is attached to the Special Services Branch of the War Department, carrying on research on army morale. Professor E. G. Trimble, now with the President's Committee on Fair Employment Practices, will continue on leave until January 1.

Professor Benjamin E. Lippincott, of the University of Minnesota, has been commissioned a 1st lieutenant in the Army Air Corps, and Mr. Charles H. McLaughlin, 2nd lieutenant. Both are in active service.

The University of Michigan has granted a year's leave to Professor Lawrence Preuss, now serving as assistant divisional chief in the Department of State, and to Professor Harlow J. Heneman, commissioned as a captain in the Military Intelligence Service of the War Department.

Dr. H. E. Cohen, who taught at the University of Chicago during the winter and spring quarters, 1942, has accepted an appointment as administrative analyst with the FPHA.

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During the past summer, Professor O. W. Wilson, of the University of California, conducted surveys of the police systems of Hartford, Conn., Syracuse, N. Y., and Louisville, Ky.

A training institute for municipal attorneys, planned by Mr. Frederick Macmillan, of the Wisconsin League of Municipalities, was held at the University of Wisconsin Law School August 15–22 under the auspices of the Wisconsin vocational schools.

Dr. Francisco A. Mendieta, superintendent of banks in the Republic of Nicaragua, has been appointed dean of the School of Economics and professor of money and banking in the Central University of Nicaragua.

Dr. Merritt B. Pound, head of the department of political science at the University of Georgia, has secured leave of absence to accept a captaincy in the Army Air Corps. The department of political science was created at the University of Georgia in 1941. Other members of the department are Mr. M. Clyde Hughes and Drs. Willis H. Bocock, J. H. T. McPherson, and Albert B. Saye.

Professor Cromwell A. Riches has resigned his position at Goucher College to accept a research and analysis appointment with the Foreign Empire Unit in the Bureau of Foreign and Domestic Commerce.

Professor Charles B. Hagan, of the University of Illinois, has been granted a year's leave of absence to enable him to accept appointment as visiting lecturer at Harvard University.

Dr. Arnaud B. Leavelle, formerly an instructor at Swarthmore College, has been appointed to an instructorship at the University of Illinois.

At the University of Michigan, Dr. Edward H. Litchfield has been reappointed lecturer in political science to assist with courses in public administration; and Dr. Clark F. Norton, of Montana State University, has been appointed instructor.

At the University of Tennessee, Professor Kenneth O. Warner has been granted leave of absence to serve as director of personnel for OPA, and Professor Lee S. Greene has been named acting head of the department of political science.

At the University of California (Berkeley), the following appointments have been announced: Dr. Hans Kelsen, visiting professor of political science; Dr. Victor Jones, formerly of the Illinois Institute of Technology, as assistant professor; and Messrs. Jacobus ten Broek and Boynton Kaiser as instructors.

Government House, at Haverford College, was dedicated on October

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10 as a focal point for instructional and other activities in the general field of government. Its development has been made possible by a gift from the Triangle Society of the College. The National Foundation for Education will maintain an office in the building.

Mr. Thomas P. Jenkin, of the University of Michigan, has accepted a position in the University of California at Los Angeles.

Dr. George W. Willoughby, who received a doctor's degree at the State University of Iowa during the past summer, has been appointed professor of political science at New Mexico State Teachers College, Silver City.

Dr. Robert M. W. Kempner, of the University of Pennsylvania, serves as expert of the government in the field of Nazi police and administrative techniques in spy and sedition trials.

Professor Arthur E. Bestor, Jr., formerly assistant professor of history, Teachers College, Columbia University, has been appointed assistant professor of humanities at Stanford University.

Mr. James W. Drury, of Princeton University, is in service in the U. S. Army as a 2nd lieutenant.

A conference on "Social Education in Wartime and After" will be held in New York City during the Thanksgiving holiday, November 26–28. The conference will constitute the twenty-second annual meeting of the National Council for the Social Studies. Government officials and social scientists will meet with teachers from elementary and secondary schools to consider what policies and practices should govern social-studies teaching in the United States during the war. Conclusions of the conference will subsequently be published by the National Council. Anyone interested in attending all or part of the conference should write for further information to Wilbur F. Murra, executive secretary, National Council for the Social Studies, 1201 Sixteenth St., N. W., Washington, D. C.

Professor Robert E. Cushman, of Cornell University, has taken the chairmanship of a special committee set up under the auspices of the Social Science Research Council, and sponsored by that body's recently created Committee on Government, to deal with problems of research in the area of civil liberties. The immediate assignment of the special committee is to prepare an Outline of Research in the field, a first requisite for which is a full list of major organizations and agencies, official or private, which are studying or doing anything relevant to the problem, and also of studies in the field either projected or actually going on. To this end, all persons engaged in or knowing of activities of the sort are urgently invited to communicate with Professor Cushman.

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A new course, to some extent integrating the various disciplines in their contributions to an understanding of the American scene, is being experimented with at the University of Washington. Each of half a dozen departments offers an "American Tradition" course. Instruction and examinations are conducted independently, but a series of evening lectures on the same general theme may be attended by all students registered in the various departments.

Under the auspices of the Faculty of Political Science of Columbia University, in conjunction with the Parker Institute of International Affairs, a program of training in international administration has been instituted at Columbia, primarily to aid in the development of personnel capable of performing tasks of an administrative nature which Americans may be called upon to perform in such countries or territories as the United Nations may liberate or occupy. These tasks may be envisaged as ranging from those of the officer charged with maintaining security and administering temporarily the governments of the areas occupied, to those of the economic expert assisting in the rehabilitation and management of local economic institutions, or of the social worker who administers relief. The program is not concerned with the framing of plans or policies, but solely with the training of personnel to help in administering whatever plans are adopted.

During the past two years, at the State University of Iowa, a joint seminar has been conducted by the departments of political science, history, sociology, and economics. Enrollment has been limited to three candidates for the Ph.D. from each of the four departments. The staff consists of a representative from each area, and Professor Kirk H. Porter has represented political science. Members of the seminar present for discussion papers intended to raise problems of vital interest to advanced students in all fields concerned. In furtherance of this plan of coöperation, the four departments are offering during the present academic year a course entitled "The World Today," open to juniors and seniors majoring in one or another of the four departments. The class meets three times a week, one of the sessions being an evening public lecture. Lecturers are drawn from the University staff and deal with international problems of political, social, and economic character growing out of the war. Two discussion sessions are conducted each week by staff members from each of the four departments; and Professor Jacob Van der Zee represents political science. On the freshman level, three small experimental sections of first-year students are being conducted by staff members from political science, economics, and sociology. In these, an effort is made to present "basic concepts of social science," as distinguished from the conventional offerings in introductory courses in the three areas. In this work, Dr. Jack T. Johnson represents the department of political science.

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Essays in Honor of Charles E. Merriam: The Future of Government in the United States. EDITED BY LEONARD D. WHITE. (Chicago: The University of Chicago Press. 1942. Pp. ix, 274. $3.50.)

Two of the twelve essays which compose this volume lie somewhat outside the scope of the title—the future of government in the United States. The first is by Mr. Merriam himself on the nature and development of his intellectual interests. It is a part of a promised volume on "The Education of Charles E. Merriam," which all his colleagues will await with impatience, for this informing and whimsical study is a forecast of delights to come. The second essay outside the main center of concern is Mr. Schuman's chapter on "World Politics and America's Destiny," which deals with his vision of America's mission relative to "the redemption of mankind from worry, want, and war in the greater republic of the future . . . the coming federation of the free."

The remaining ten essays bear directly on the internal affairs of the United States. One of these is general: Mr. Lasswell's discriminating paper on methods—"The Developing Science of Democracy." Another is broad and philosophical: Mr. Cohen's contribution on the ancient theme of "Sovereignty." Three turn on the subject of politics and politicians: Mr. Rosten's "Political Leadership and the Press," Miss Overacker's "Trends in Party Campaign Funds," and Mr. Gosnell's "The Future of the American Party System." To administration three papers are devoted: Mr. Key's "Politics and Administration," Mr. Harris' "The Future of Administrative Management," and Mr. White's "The Public Service of the Future." Mr. Lepawsky's essay on "The Future of Urbanism" stands in a class by itself. So does Mr. Vieg's "Developments in Governmental Planning."

In general, the papers reflect an intense concentration of thought, wide knowledge, a strong sense for the real, and a determination to bring out helpful and workable suggestions for action. They are written in a style clear and incisive—a style which, in my opinion, marks a decided advance on most of the works written by members of the older generation. Here, then, is encouraging promise, for the power of style is the power of thought.

From the above analysis it is evident that the body of the volume before us does not exactly fill the amplitude of the title—the future of *government* in the United States. Government is more than politics, administration, urbanism, planning, and the redemption of multitudes outside the United States. It includes the Executive, which is power transcending administration. It includes the Judiciary, so significant for liberty, one of the ends of government. It includes the Legislature, so strangely neglected by students of political science in the United States for more than fifty years.

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Hence, for me, what is left out of this volume is as fateful in its significance as all the excellence—I may say, indeed, high excellence—of the papers embraced within its pages. If these omissions were due to exigencies which arise in connection with every symposium, they might be passed over as negligible. But they represent, I fear, a disregard of certain fundamentals in American government which characterizes the dominant thought of political scientists in the United States, or at least the major portion of them. That disregard, as I am given to see things, does not bode well for the future of representative and constitutional government in the United States.

If Mr. Merriam's former students, well trained as they undoubtedly are, would bring to the subject of the Executive, the Legislature, and the Judiciary the spirit and the competence which they so admirably and cogently demonstrate in these pages, their ancient colleague, the undersigned, would count his generation doubly fortunate.

CHARLES A. BEARD.

New Milford, Conn.

The Constitutional History of the United States. By HOMER CAREY HOCKETT. (New York: The Macmillan Company. 1939. Two volumes. Pp. 417, 405. $3.00 each.)

These volumes are the first two instalments of what is intended to be a three-decker work covering the initial 150 years of American independence. The work retravels in the main the ground covered by Professor McLaughlin's volume published in 1935, and with substantially the same emphases. It is predominantly a history of controversy, and particularly of the controversy over states' rights and national power.

Professor Hockett's approach to this subject is indicated by his contention (I, pp. 260–601) that the Constitution as it came from the framers was "neutral" with respect to the question of whether "the Union which it formed was a confederation of sovereign communities or one sovereign community," and was unclear as to the location of the authority to settle disputes between the federal government and the states regarding their respective powers. In taking this position, Professor Hockett seems to me to miss the most significant single development in the pre-Civil War interpretation of the Constitution—what Marshall termed its "confederatization."

The evidence is ample to show that its framers did not regard the Constitution as the work either of "sovereign communities or of one sovereign community," for they regarded such communities not as the *cause* but as the *consequence* of constitutions. Furthermore, holding as they did that all just governments rest on the consent of the governed, they of logical necessity imputed the Constitution, once it was adopted, to the consent

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of the *human beings* governed under it. This is precisely the theory, for instance, which Marshall sets forth in the opening paragraphs of his opinion in McCulloch v. Maryland, which Professor Hockett entirely misapprehends.

And how anybody, with the "necessary and proper" clause and the "supreme law of the land" clause before him, can contend that the Constitution is unclear on the question whether the power finally to interpret it was intended to belong to the national government, quite escapes my comprehension. The difficulties which in time arose in this respect are all traceable to the notion that the Constitution was some sort of emanation from state "sovereignty"; nor would the most explicit language have availed—indeed, it *did not* avail—to lay this arrant and preposterous ghost. For whatever the Constitution, considered as the voice of "sovereign states" might say, they could always take it back, "sovereignty" being "inalienable."

To the political scientist, Professor Hockett's work thus far is a double disappointment. It is a repetition of "far-off unhappy things, and battles long ago," which have long since lost most of their significance for this generation; and it is an opportunity missed to attempt the kind of constitutional history we really need, a history of the development of today's operative institutions. Perhaps in his third volume, where he will be more on his own, Professor Hockett will still be able to justify his project. At least it is something that he has planned to concede so much space to the last fifty years.

EDWARD S. CORWIN.

Princeton University.

Democracy, Liberty, and Property; Readings in the American Political Tradition. EDITED BY FRANCIS W. COKER. (New York: The Macmillan Company. 1942. Pp. xv, 881. $4.25.)

This collection of writings representative of American political thought differs from previous ones not so much in the materials reprinted, although there are some important additions, as in the scheme of organization. It is divided into four sections, dealing with "(1) the problem of locating political control, (2) the lines to be drawn between governmental authority and individual liberty, (3) the nature and limits of property rights, and (4) the problem of political change." Within each section the arrangement is chronological.

As a result of this method of arrangement, there is a definiteness of focus upon these essential aspects of American thought not elsewhere to be found. If certain traditional and not unimportant parts of the story, such as federalism and the separation of powers, are only incidentally touched upon, it may be answered that the substantial issues which usually con-

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ditioned discussions of those problems are presented in generous proportions. Almost all of the principal theorists, from the time of Winthrop, Cotton, and Williams, through the classical era of Jefferson, Madison, the Adamses, and Paine, the period of the establishment of the new government, and that of the controversies over slavery and the broadening of democracy, are adequately represented. I regret that there are only two brief selections from the greatest of American debates on politics—the Convention of 1787—and only two more from the greatest of American books on politics—*The Federalist.*

Only in Part III, "Government and Property Rights," are there many selections drawn from recent literature. In Part I, twenty out of twenty-five date from before the Civil War; in Part II, eighteen and one-half out of twenty; and in Part IV, five out of six. In the third part, on the other hand, eighteen of twenty-seven are from the latter period, fifteen of them having been written since 1900. The authors represented include Cleveland, Sumner, Veblen, Beard, the Roosevelts, LaFollette, Wilson, Wallace, Hoover, Thomas, and Becker. This temporal disparity indicates the shift in the subject-matter of political discussion in America. It also helps to make evident the difficulties of an analysis which will indicate the interconnections between the several subjects of the book. For there are very real interconnections. Controversies involving political control and civil liberties have nearly always grown out of, or had an intimate connection with, those sources of faction of which Madison wrote in the tenth *Federalist:* religion, personalities, trivialities, and, especially, "the various and unequal distribution of property." The relations between the location of sovereignty, the scope of civil rights, and the governmental control of property rights have been particularly close during the last three generations, and any discussion of these several problems which avoids the problems of relationships will necessarily be inadequate.

BENJAMIN F. WRIGHT.

Harvard University.

America's Strategy in World Politics. By NICHOLAS J. SPYKMAN. (New York: Harcourt, Brace and Company. 1942. Pp. xvi, 500. $3.75.)

This forceful and forthright exposition of power politics symbolizes the amazing swing of the academic pendulum which has taken place since the years following the last world war. One recalls as from a dim and remote age the utopian internationalism of that period: the mushroom growth of college courses on peace, international government, and the League of Nations; the hopeful projects for codifying, extending, and enforcing international law; the interminable discussions of procedures for outlawing war and for punishing aggressors. During those sunny years when Germany lay prostrate and when National Socialism was no more

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than a tiny cloud on the horizon, American political science gave little attention to the power factor in international relations, and practically none at all to fundamental changes then taking place in world power relations as a result of rapid and continuing developments in military and industrial technology. Except for the descriptive chapters on national defense in government textbooks, the study of military policy and administration was almost totally neglected. The development of a new school of geopolitical thought in Germany passed largely unnoticed. Mackinder, Kjellen, and Haushofer were names virtually unknown to political science in America.

The rapid disintegration of the post-1918 order, beginning with the world economic crisis, gave new direction to the study of international relations. American political scientists began to give serious attention to questions of state power, to the conditions of its exercise, and to its rôle in international politics. This reviewer pioneered such a course in political geography at Stanford.[1] Colonel Beukema introduced geopolitical studies at West Point. Textbook writers began to devote more space to geography, technology, and other power factors. The catastrophic march of events in the later '30's exerted an ever-increasing pressure in this direction, leading to large-scale projects of fundamental research, among which Professor Spykman's study is one of major importance.

This study was projected long before the Japanese attack on Pearl Harbor, to meet the "need for a new approach to the question of isolation versus intervention." The finished product is the first comprehensive, systematic "analysis of the position of our country in terms of geography and power politics." The book falls into two major divisions. Part I ("The United States and the Balance of Power") surveys the geopolitical relations of the United States with Eurasia-Africa as a whole and with the individual power centers in this area. In the second and larger part ("The Struggle for South America"), the author analyzes and deflates the isolationist strategy of hemisphere defense.

The main thesis of the book runs somewhat as follows: International politics is a ruthless struggle for power among the sovereign units of the national state system (which parenthetically is no system at all, but a condition of international anarchy). War—which in our time has come to mean total war—is inherent in this system. War is the dominant instrument of national policy. A country's geographical domain is the military base from which it wages war and from which it prepares for future wars during the temporary armistice called peace. A country's location and resources determine its military strategy in war-time. Those same geographical factors should determine its political strategy in peace-time.

[1] See "Political Geography as a Political Science Field," in this REVIEW, May, 1931, pp. 439 ff.

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Historically, the American people have enjoyed a high degree of military security, not only because of their own power potential, or because of their geographical isolation from other power centers, but also because of the mutual rivalries and balance of power which restrained the aggressive ambitions of European and Asiatic empire-builders. Twentieth-century developments in transport and in weapons, in conjunction with other causes, have brought this historic power balance crashing down in ruins. There is real danger that the resources of Eurasia-Africa, which in the aggregate exceed our own, will be integrated by men of large ideas, insatiable ambition, dynamic energy, and poisonous hatred toward the United States. If this happens, we shall be strategically isolated and encircled, and may be compelled to fight for national survival against superior enemies on several fronts. Against this threat, hemisphere defense is held, for military, political, economic, and psychological reasons, to be no defense at all. America's strategy in this crisis is rather to restore, and then to maintain by continuing intervention, a new political equilibrium in both the trans-Atlantic and the trans-Pacific power zones. As to Europe, it is specifically contended that American security requires a strong independent England, a strong but reconstituted Germany to offset the enormous power potential of Russia, and a regrouping of the weaker European states into several subsidiary power constellations. For the Far East, it is proposed that the United States foster a second balance of power by supporting a chastened and reconstituted Japan against the rising threat of Chinese hegemony over all eastern Asia.

All this raises many questions. How, for example, does this proposed strategy accord with the aims of other major partners in the common cause against the Axis? Will the United States emerge from this war in any position to dictate terms to Russia and to China? Has the author recognized sufficiently the economic and psychological overtones of national policy? History, as this reviewer reads it, offers little hope that guns and a balance of power will provide a stable world unless society can also provide personal security and a sense of significance to the common man in all countries.

Persons previously acquainted with the literature of geopolitics, sea power, and military strategy will recognize many familiar terms, phrases, and ideas, though these are rarely attributed to their sources. The text has no accompanying documentation, but there is a well-selected bibliography. The maps are excellent, and the index adequate. Viewed in the large, Professor Spykman has written a challenging book which should be read and pondered by every political scientist. This book has already provoked widespread discussion. And one may safely predict that it will leave an indelible imprint upon the strategy of American statecraft.

HAROLD H. SPROUT.

Princeton University.

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American Regulation of Arms Exports. By Elton Atwater. (Washington: Carnegie Endowment for International Peace. 1941. Pp. x, 287. $2.00.)

The practice of the United States in respect to the regulation of the export of arms has been subjected to thorough and scholarly examination by Professor Atwater. Although regulatory measures of such character did not receive much popular attention until the "neutrality" legislation debates of 1935–39, there is in fact a considerable body of earlier practice on the subject, and it forms an important phase of American foreign policy.

For purposes of analysis, Professor Atwater divides American regulatory practice into three overlapping periods. From 1793 to 1917, the United States followed for the most part the Jeffersonian principle of permitting unrestricted arms exports by its citizens. Several arms embargoes were laid during this period, as those of 1794, 1797, and 1862; but they were for the purpose of conserving arms supplies and were, therefore, measures of self-defense. It is common knowledge, of course, that the policy of freedom of sale and export of arms by citizens was strongly reiterated by the American government during World War I.

Beginning in 1905 with an embargo on the export of arms and munitions to the Dominican Republic, the United States has on several occasions restricted arms exports for the purpose of promoting stability and discouraging revolution. In addition to the case referred to, such restrictions have been adopted at various times against shipments to Mexico, China, Cuba, Honduras, Nicaragua, and Brazil.

Finally, since 1934, arms embargoes have been adopted in an endeavor to discourage foreign wars and to keep the United States out of war. This policy first appeared in the Chaco embargo of 1934–35, and was continued in the legislation adopted in 1935 and 1937.

Although the heated controversy over "neutrality" legislation, which no doubt gave rise to Professor Atwater's study of arms regulations, is now buried by reason of active American participation in the war, the volume should be of value in the framing of post-war regulations. The author has examined each instance in which an embargo has been imposed, ascertained its purpose, the methods of its application, its success or failure in accomplishing the ends sought, and the factors responsible for its termination. Although sweeping generalizations concerning which policies and practices should be followed have been avoided, certain conclusions stand out from American experience: (1) If an arms embargo is to be effective, it should be administered through a licensing system, such as the United States has employed since 1935. (2) An arms embargo alone cannot be a very potent method of preventing war, or even of discouraging revolution. (3) To be most effective, an embargo should represent the coöperative effort of nations rather than unilateral action.

Professor Atwater's discussion of the right of a neutral state to adopt

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or repeal an arms embargo forms an interesting part of the volume. However, the reviewer hopes that in the post-war world this part of the work will be of historical interest only.

CROMWELL A. RICHES.

U. S. Department of Commerce.

Public Policy; A Yearbook of the Graduate School of Public Administration, Harvard University. EDITED BY C. J. FRIEDRICH, EDWARD S. MASON, AND PENDLETON HERRING. (Cambridge: Graduate School of Public Administration. 1942. Pp. 275. $3.00.)

The third volume of essays of the Graduate School of Public Administration maintains the high standards set by the previous volumes, although it is much shorter in content. The material in this volume is grouped into three parts dealing with "War Morale and Civil Liberties," "Labor and the War," and "Some Problems of War Finance and Government."

Gordon W. Allport and Edward L. Bernays present methods of strengthening and integrating our national morale and some systems of measuring its effectiveness. The longest, and by all means the best, essay in the volume is on "Civil Liberties in a period of Transition," by David Riesman. This excellent historical exposition of the evolution of our civil liberties deserves a much larger reading than it would receive either in this volume or the series of which this article is the introduction. Alan B. Overstreet completes the first part with an excellent companion treatise on "The Administration and Civil Liberties in War-Time." Civil liberties are inseparately connected with civilian morale and war-time efficiency, and the Administration should avoid a recurrence of the confusion and abuses of the last war.

The three essays in Part II are by D. H. Davenport on "Mobilization of Labor Resources for the Defense Effort"; Earl G. Latham on "The National Defense Labor Policy—Supply, Wages, and Strikes"; and Judge Charles E. Wyzanski, Jr., on "Labor Disputes During the War." All of these studies are relatively short and, as their titles indicate, deal mainly with problems of the pre-Pearl Harbor period, although Judge Wyzanski delivered his contribution as a speech at Northwestern University in January.

Part III, on "Some Problems of War Finance and Government," includes articles on "The Rôle of Statistical Forecasts in Planning for Defense," by James Tobin; "The Control of Industrial Mobilization," by Wayne C. Grover; "National Defense and Local Government; A Case Study of the Quincy, Massachusetts, Area," by Laurence L. Barber, Jr.; and "Changes in Economic Structure Arising Out of the War and Their Implications for Public Policy," by Alvin H. Hansen. Tobin deals with the

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two problems of estimating the national income and the civilian demand for commodities. Grover shows the relations between industrial mobilization, government, and industrial personnel, the methods of planning and awarding contracts, and the competition which arises when planning and proper allocations are absent. The case study of Quincy by Barber is an excellent example for dozens of similar studies which are being made, or should be made, by properly qualified students of our localities affected by the expansion or installation of industrial or military establishments. Hansen is concerned with solving the phenomena of depressions and in some manner dealing with the advancing tide of a totalitarian economic order.

All in all, these essays are provocative and, in many respects, strikingly prophetic. This volume will find a place beside its companions and mark the gradual transition from the economy of peace and its relatively insignificant problems to that of war with its need for immediate and weighty decisions based on past experiences.

EDWIN A. COTTRELL.

Stanford University.

Metropolitan Government. BY VICTOR JONES. (Chicago: The University of Chicago Press. 1942. Pp. xxiv, 364. $4.00.)

Among the various problems of municipal government which have occupied the attention of political scientists during the past two or three decades, few are more challenging than that of the effective organization of government of metropolitan areas. For, although the existing highly decentralized type of governmental organization of these areas is signally defective, yet it has proved exceedingly difficult to obtain general acceptance of any alternative plan. In 1930, the National Municipal League published a comprehensive survey of this problem by the reviewer. Now the Social Science Research Committee of the University of Chicago makes public a volume on the same subject by Dr. Victor Jones. In traversing the same field, Dr. Jones, however, has availed himself of new material and here and there throws some new light on the subject. Wisely, he has concerned himself with the interpretation of existing data, rather than with the collation of new data.

The first three chapters describe the rise of the metropolitan communities and the development of the existing medley of local governments therein. The process is identified as one of concentration of population in industrial centers, the dispersal of this population from the congested sections of the central city into the suburbs, and the incorporation of the latter into towns, villages, and cities with a view to providing the suburban populations concerned with the municipal services required by them. It is shown that this multiplication of local governments, while adequately pro-

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viding for the more minute and special requirements of the various local groups within the metropolitan population, has failed adequately to take care of the broader requirements of that population—more particularly, that it has tended to accentuate the existing tendencies toward unplanned and often uneconomic distribution of the population throughout the area. The author applies the term "disintegrated" to this form of multiplicated or "subdivided" governmental organization, although it is historically scarcely applicable thereto, inasmuch as disintegration implies the pre-existence of an integrated condition—and such really never existed.

The bulk of the book is devoted to a discussion of proposed solutions. Those involving no structural changes in the existing governmental set-up, such as inter-municipal coöperation, the creation of special metropolitan authorities, and the extension of federal and state services, are disposed of quickly. They are rightly characterized as being mere stop-gaps, valuable at best as stepping stones or complements to real solutions. More space is devoted to the discussion of remedies requiring structural changes, such as the reorganization and municipalization of the metropolitan county, city-county consolidation, and the creation of a federated metropolitan government. These solutions are considered to hold considerable promise for the future. By contrast, the possibility of solving the problem by way of complete absorption by the central city of the suburbs through annexation is discounted. The enactment during the past twenty or more years of constitutional and statutory restrictions against annexation is held to have made resort to this expedient much more difficult.

One of the prime obstacles to any type of comprehensive integration of government in metropolitan areas is said to be the unsympathetic attitude toward it of the rurally-minded state legislators who "fear any divergence from the usual form of government or the usual pattern of intergovernmental relationships, considering it a precedent which in time will adversely affect their interests in their own localities," and who, moreover, are afraid that the programs in question will increase the political power of the central city. It is shown that not all of the suburban dwellers are necessarily opposed to programs of metropolitan governmental integration and, on the other hand, that not all of the dwellers in the central city are necessarily in favor of it. The author believes that a boldly and intelligently conceived and ably presented program of such integration may yet win popular approval and overcome all obstacles thereto in the state legislative body. He insists, however, that the advocates of such programs, if they wish to succeed, must learn to employ at least as effective propaganda techniques as those usually employed by the opponents of such plans.

The book is well written and is profusely annotated. Although in no way original in its main conclusions, it is a very effective restatement of the

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problem, and should be widely read. For having sponsored this work, Professor Merriam and the Social Science Research Committee of the University of Chicago deserve the gratitude of all persons interested in the progress of municipal government.

PAUL STUDENSKI.

New York University.

From Relief to Social Security. BY GRACE ABBOTT. Chicago: The University of Chicago Press. 1941. Pp. vi, 388. $2.50.)

The State Becomes a Social Worker. BY ARTHUR W. JAMES. (Richmond: Garrett and Massie. 1942. Pp. xiv, 368. $3.00.)

The titles of both of these excellent volumes are in a certain sense misleading, for each is a collection of addresses, papers, and reports instead of a logical, developmental history of public welfare. Both have the advantage and disadvantage of the documentary source-books which they are, for on the one hand they provide important source-materials in the comparatively new field of social work, but on the other hand they fail to present a clear picture of trends or historical development—a disadvantage, be it remarked, greatly overbalanced by their advantages. In the presentation of such source material, the way has been paved by the faculty of the School of Social Service Administration of the University of Chicago, of which Miss Abbott was a distinguished member during the last years of her life. The materials which they have published for the use of students of social work have constituted a major reason why the training of such students has been raised to a professional level.

An even more important reason for the Abbott volume is found in the fact that it is by Grace Abbott. As she was one of the great public welfare pioneers in American life, anything from her pen contributes immeasurably to our knowledge and thinking concerning the development of social welfare and public administration in the United States. Her perspective and breadth of vision were so great that, combined with her practical experience as chief of the Children's Bureau, there is a value in anything she had to say on the subjects of social work and public welfare organization and administration, in any of their manifold ramifications. Ably edited by Miss Abbott's sister, Dean Edith Abbott, the present volume serves to highlight some of Miss Abbott's major contributions to social thinking in these fields. The excerpts from her testimony before congressional committees are particularly noteworthy in their incisive directness as well as in their vision, though at one point (pp. 202–204) her championship of a tax-credit instead of a grant-in-aid for unemployment compensation legislation was, in the eyes of many, ill-advised.

Save for the address on "The Public Protection of Children," delivered as a presidential address before the National Conference of Social Work

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in 1924, the present papers were written during different periods of the recent ten-year depression. Yet they look ahead to situations which have now become an accepted part of our social thinking. For instance, today, when civil service is becoming the order of the governmental hour, it is important to note Miss Abbott's realization of the connection between the development of civil service and the rise of adequate public welfare. Again, her statement of belief is constantly finding more and more complete fruition: "I confess that I have always believed that if the needs were to be met adequately, the state must eventually assume the responsibility, and that the administrative problems could be solved only during the process of state administration and not before this responsibility was undertaken."

The James volume is in the same tradition of documentary sources, for the most part by the commissioner of public welfare of Virginia, but contributed to by others in the field of public welfare administration. The book is not intended to be a history of public welfare, but, as the author says, aims to show "what the situation is, how it got that way, and what can be done about it" in the state of Virginia. The author was a member of the Department of Public Welfare of Virginia from its inception in 1922 until 1938, serving in various technical capacities before his appointment as commissioner. That very service occasionally makes him fail to see the forest for the trees and leads him to include among his other materials of genuine and widespread public welfare interest material that is either ephemeral or of interest only to a local public. For instance, Chapter 7, on "The Personnel of the Virginia Public Welfare Department," even as a documentary source, is too much a mere statement of personalities to cast any real light on either personnel practices or administrative organization. The volume jumps from the general to the particular and back again in a manner frequently disconcerting. Although students of public welfare organization and/or of specific public welfare programs will find much of value in the book, much of it is too intermingled with purely local problems and situations to be the real "administrative interpretation" which it attempts to be.

JANE PERRY CLARK CAREY.

Barnard College.

The Inter-American System; A Canadian View. By JOHN P. HUMPHREY. (Toronto: The Macmillan Company of Canada, Ltd. 1942. Pp. xi, 329. $3.00.)

In recent discussion of inter-American relations, Canada has usually been omitted, thus rendering the very term "inter-American" or "pan-American" inaccurate. Books have appeared under such titles as "Good Neighbors" without even a passing reference to the Dominion. The Office of the Coördinator of Inter-American Affairs has confined its activi-

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ties to the South and Central American republics, although the executive order by which it was created clearly defined its jurisdiction so as to include the whole hemisphere. All this has been due, not merely to the mistaken judgment of those responsible, but also to the self-imposed isolation of Canada from the official inter-American system in the past. This book—the first on this subject of this hemisphere—ought to make clear to all Americans (including Canadians) the rôle that Canada has played, and could play, in the affairs of this hemisphere. The eventual association of Canada in the inter-American system has been taken for granted in the United States and has recently been urged by prominent American writers. Professor Humphrey leaves no doubt that he favors immediate Canadian entry into the system. Unfortunately, he does not make clear, for the uninitiated reader, whether he voices merely his own viewpoint or a general Canadian attitude. In truth, the past five years have witnessed increasing sympathy in Canada with the idea of Canadian membership, but no general or official acceptance. Inexplicably, Mr. Humphrey does not quote a significant statement made by the Canadian prime minister in the House of Commons on March 30, 1939, in which Mr. King formally declared that, while unfavorably disposed to immediate participation in the Union of American States, his government was ready to give consideration to such a step in the future.

The bulk of Mr. Humphrey's book is devoted to a survey of the entire history of the inter-American system, with two chapters—the first and the last—on the actual and possible relations of Canada to this system. The historical survey is a careful digest of the main conventions and resolutions of previous conferences, for which the author, with his legal training and background, is eminently fitted. To the reviewer, there seems to be lacking, however, an integration of these developments with the broad trend of affairs in the world and the hemisphere during the past century, and, in particular, an interweaving of Canadian developments and interests with those south of the 49th parallel. Apart from occasional references to Canada in the body of the book, Canada's rôle is treated separately in the first and last chapters, both of which contain an interesting analysis of the implications of Canadian membership in the Union. In the historical survey, the writer brings out very well the striking changes of American trade policy and the switch from Dollar Diplomacy to Good Neighborliness, the careful avoidance of political issues by the Conferences down to 1928 and the concentration on such issues thereafter, the gradual change in the nature of the Union as it ceased to be an American "Colonial Office," the gradual growth of a multilateral interpretation and application of the Monroe Doctrine instead of the original unilateral approach, the replacement of neutrality by belligerency as the general policy of the system during the war period, and so on. In addition, the writer has made an admirable analysis of other topics dealt with by

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the system—arbitration, tariff barriers, collaboration with the League, cultural and technical coöperation, etc. Would it not have been possible to analyze thoroughly Canada's policy at each of these successive stages of development and her attitude to each of these main topics, perhaps discussing the hypothetical situation of Canadian membership at each stage? In this way a complete integration of the material might have been achieved, and the consideration of the problem of the last chapter, "Should Canada Join?," might have been facilitated.

Some minor weaknesses of the book are the lack of a good map of the Atlantic region, the absence of the texts of some of the more important documents and statements referred to, the omission of any mention of the Americas' interest in the Canadian North (in particular, the routes to Alaska), or of the solid achievements in the sphere of hemispheric defense on the Atlantic seaboard, and the lack of a list of the main conferences with dates and locations, to supplement the excellent list of technical conferences and of permanent inter-American organizations contained in the appendices. Inevitable in a book published in early 1942 is the non-inclusion of the most recent developments in the American system, including the Rio conference, which, with its change from neutrality to belligerency in American policies, removed a possible obstacle to Canadian adherence. The author has chosen the chronological approach to his vast subject, supplemented in the three concluding chapters with topical analyses of inter-American institutions, Pan America in the World Order, and Canada's rôle. There has inevitably resulted considerable repetition (we are told six or seven times that the Convention of 1928 was not ratified), and a great deal of cross-reference. The preceding criticisms notwithstanding, the book remains a commendable achievement in the realm of descriptive analysis, and should prove of value to the general public, to the student and teacher, and, particularly in its Canadian sections and references, to the non-Canadian scholar.

For lack of space, this review cannot discuss certain questionable statements which deserve noting. Had the Pan American system become in 1941 "the strongest contemporary force for international order" (p. 41)? Had inter-American solidarity made it possible for the Americans "to join effectively in taking measures designed to keep the war away from the Western Hemisphere" (p. 73)? Had the developing world crisis "nothing to do" with the adoption of the Good Neighbor policy by the U.S.A. (p. 114)? Was Canada "probably as loyal to the institution [the League] as any other member, and more loyal than most" (p. 258)? Does the author really believe that "a world organized on a basis of regional unions coördinated in a super-federal union" is feasible, in view of the evidence provided by his book, and that it would be the happy compromise between the urgent need for universality in a collective system

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and the American aversion to non-American commitments (pp. 233–234)?

H. GORDON SKILLING.

University of Wisconsin.

Law and Peace in International Relations. By HANS KELSEN. (Cambridge, Mass.: Harvard University Press. 1942. Pp. xi, 181. $2.00.)

Both the distinguished author and the theme of this volume, containing the first of the lectures recently established in memory of the late Mr. Justice Holmes, suggest the cataclysm that today shakes the world. One of that large band of Continental scholars who have been exiled from their native lands, whether because of race or outstanding intelligence or both, by dictatorships that fear the light, and, seeking asylum under the Statue of Liberty, are significantly contributing to the development of science in this country, Hans Kelsen is the acknowledged leader of the most distinctive school of juristic thought that Europe has developed in recent years. And the theme is a problem accentuated by world-wide war, namely, whether the existing system of international law is or can be made a legal order promoting peace. This problem is considered in a two-fold aspect: first, from the theoretical point of view, to ascertain whether international law is to be regarded as a legal order at all; second, on the plane of politics and reform, to determine whether and, if so, how the system can be improved in conformity with the peace ideal.

The first and theoretical inquiry concerning the nature of international law is, as should be anticipated, predicated upon the "pure theory of law," succinctly outlined in the initial chapter. Pursuant to the theory, law is the "specific social technique of a coercive order," an order distinguished by the employment of force to control human conduct and describable in terms, not of physical fact, but of hypothetical propositions or norms in which the delictual behavior and other conditions of specified sanctions are defined. In the light of this theory, the author examines the system of international law to determine whether it can be stated as a legal order prescribing coercive sanctions for the delicts of states and concludes that it is possible, though not necessary, to do so on the *justum bellum* doctrine characterizing war as in principle a delict that can be justified only as a sanction of international law. This premised, the analysis provides the basis for an instructive comparison of international with national law, indicating the indirect, collective, and absolute quality of international liabilities, the lack of differentiation in their sanctions, and the primitive decentralization of the international system.

The final two chapters turn from theoretical analysis to the possibility of reform. First, the solution of a federal union is considered and, for immediate purposes, discarded as a "dangerous illusion." The argument concludes with the thesis, supported by the history of legal evolution,

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that the next and most important step toward international peace is the establishment of an international court with compulsory jurisdiction. The proposal is predicated upon a powerful, summary critique of the League system, accompanied by refutation of the usual objections to compulsory adjudication or arbitration of international disputes and expressing the conviction that "the idea of law" remains the most potent ideology of power.

The conclusion compels consideration, even though certain reservations must be noted with respect to the argument. First, the theoretical analysis in the first four lectures, instructive as it is in many respects, is virtually disconnected from the practical problem discussed *in fine* and, in any case, must stand or fall with the theory of law from which it starts. At least to those who conceive of law as means to social ends (to which the author subscribes), the pure theory of law, in excluding from juristic science the vital factors of experience and ideal purpose, must for that very reason seem a poor theory, a belated effort to lend countenance to a species of formal positivism. As applied in this instance, it leads, moreover, to the questionable position of conceiving law in terms of the employment of force without regard to end or effect, a view which necessarily borders upon fascism. Furthermore, the analysis would seem to be vitiated by an ambiguity in the concept of "sanction," which, if the "pure theory" were carried to a conclusion, should denote the presumed privilege or duty of certain individuals to do defined acts and not the physical acts of enforcement. This ambiguity is involved in the vital analogy drawn between war in international law and the sanction of municipal law, from which the principal conclusions as to the inadequate primitive character of international law are derived, and which involve various misconceptions belied by the principles of state liability, e.g., that international law does not admit the theory of differentiated compensation for wrong. In other words, the difficulty in international law is that the compensation and the means of enforcement must as a rule be determined *ad hoc*, while the probability of coercion is uncertain, not that there is no possibility of adjusting punishment to fit the crime. It may be added that this ambiguity as to the nature of sanctions must be of central concern to the pure theory of law, since, if the sanction be defined as a hypothetical part of a hypothetical proposition, the ground for the supposedly basic distinction between physical and normative science dissolves, or at least the argument that legal norms remain valid, though violated. If these norms are purely theoretical, they cannot survive the occasional absence of their hypothetical sanctions. But these theoretical questions do not affect the author's judicious observations on the practical aspects of international law as a means to peace.

HESSEL E. YNTEMA.

University of Michigan Law School.

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International Air Transport and National Policy. By Oliver J. Lissitzyn. (New York: Council on Foreign Relations. 1942. Pp. xviii, 478. $5.00.)

All that anyone could possibly want to know about the policies of governments in regard to airlines is in this book. The volume is so packed with useful and carefully gathered information that it cannot be read through easily by ordinary mortals and should be employed mainly as a reference work. For that purpose it is invaluable. Mr. Lissitzyn's knowledge of the politics of air transportation is profound, and his scholarship is of the highest quality. As a research fellow for the Council on Foreign Relations, he studied problems of air transport for more than two years, and this impressive book is the result of those painstaking researches.

Despite the word "international" in the title, the book deals almost as much with the methods of promoting, regulating, and operating domestic airlines as it does with international issues. After pointing out in Part I the special characteristics of air transportation and the military, economic, and other interests of states in connection with the establishment of air routes, the author in Part II makes a comparative study of national policies and legislation. American experience with respect to air transport bulks heavily in the discussion, but the techniques used by every nation of any consequence are also thoroughly described. Problems of monopoly, state ownership, state subsidy, and state regulation are exhaustively explored, and some interesting contrasts and comparisons between air and other modes of transport are furnished. In concluding his examination of types of unilateral government regulation, the author states that these problems are interrelated "with those of governmental assistance to air transport, of national objectives, and of international diplomacy. A successful air transport policy must be capable of integrating all these elements as in a jigsaw puzzle and yet remain flexible," and he believes that the United States has made "important strides" toward the achievement of such a policy (p. 239).

In Part III, air transportation routes and systems in the Western Hemisphere are considered, while in Part IV attention is focussed exclusively on international matters. Here chapters on "The Diplomacy of Air Transport" and "The Freedom of the Air" should be particularly interesting to students of international affairs and post-war problems. It is refreshing to find an author so undogmatic in regard to his conclusions. As he remarks, "Air transport policies . . . contain elements of experimentation, and problems such as that of monopoly versus competition, in either American or international air transport, cannot be solved by the use of any hard and fast formula" (pp. 282–283).

Payson S. Wild.

Harvard University.

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The Lost Peace. By Harold Butler. (New York: Harcourt, Brace and Company. 1942. Pp. 246. $2.75.)

The former director of the International Labor Office at Geneva gives in this book one of the best surveys of the international situation to be found in print. He not only indicates the many and complicated reasons for the "lost peace"; he also points out the way, long and painful as it is, toward international order.

Mr. Butler has had unusual opportunities of travel and study. He has profited much from his position as an "insider" at Geneva as the political drama of our generation has unfolded. His intimate contacts with the men and forces responsible for the present *débâcle* enable him to speak with more accuracy and understanding than is common. The book is marked by unusual perspective and insight. Moreover, it has deep philosophic and literary qualities that one too infrequently encounters in studies which attempt to appraise so-called *Realpolitik*.

From his vantage point at Geneva, Mr. Butler saw at first hand the rise and fall of the League of Nations. Although the League gained in prestige and power between 1920 and 1930, it was born with a malady which it could not overcome. The disease was the isolationism of its members, which always appeared to weaken and vitiate its acts when a real test arose. Japan, Italy, and Germany—each in turn, then all together—found that the League, because of the chronic disunity of its members, offered no bar to their increasing aggressions. The failure of the peaceful nations—especially Great Britain, France, and the United States—to use the machinery of collective security which the League made available may be regarded as the immediate cause of the present war.

In many respects, France was the leading member of the League and the keystone of peace in Europe. Her decay, defeat, and enslavement thus became a tragedy for all free peoples. Mr. Butler shows clearly how the struggle between the conservatives and radicals of France weakened the whole structure of the state. The government became so paralyzed with inner dissensions that it could not make decisions, much less take action, against Hitler. Graft in public office and social demoralization undermined the patriotism on which the strength of the nation depended. Appeasement was only a step removed from treason. France was sold out by her greedy and corrupt leaders, who imagined that they could profit while their country lost its heritage of independence and honor.

In analyzing the influences in Germany which brought about the destruction of Europe's peace, Mr. Butler goes to the heart of the problem. He deals in detail with the German mentality and its obsession with things military. He explains the inability of the average German citizen to make political decisions for himself, with the result that he is lost unless he acts *en masse* and under the influence of a popular leader. Hitler is thus not an

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unnatural phenomenon in Germany. He is, on the contrary, what the people require and demand. So long as he satisfies their nationalistic egotism by giving Germany victories, they not only will endure him but will bow respectfully before him. The Nazi revolution is thus viewed as a logical step in the development of German nationalism. Only the utter destruction of German power, says Mr. Butler, can save the world from its peril.

Europe lost the peace because her good men were so devoted to its principles that they would not think of using force to defend it. Her evil men had no such scruples. The latter were aided in their schemes of revolution and conquest by the social and political cleavages that prevented the peoples of Europe from uniting for a common purpose and by economic conflicts that left them all but bankrupt by the time Hitler rose to power. Since the peaceful peoples would not accept the obligations of collective security, they fell victim to the technique of divide and conquer. The so-called "idealistic" internationalist (for example, Winston Churchill) was the true "realist," but this fact was revealed only after the appeasers and isolationists had betrayed their nations and themselves.

How is the lost peace to be regained? The process can begin only where the war leaves off. It must be slow if the foundations of order are to be solid. A cut-and-dried system of treaties should give way this time to a process of empirical adjustments. While the nation will doubtless continue as the basis of the new society, isolationism is dead. International machinery must be established to deal with the many problems common to all peoples. Great Britain and the United States, assisted perhaps by Russia, will be required to take the lead in the tremendous job of economic reconstruction. They will also be charged with the responsibility for maintaining order and insuring justice during the period of political transition which should eventuate in a more democratic and lasting peace. Mr. Butler fills in the details of this argument in a manner that elicits respect. For a sane and realistic approach to the entire question, the book can be recommended without reservation.

S. D. Myres, Jr.

Southern Methodist University.

Tornado Across Eastern Europe; The Path of Nazi Destruction from Poland to Greece. By Josef Hanč. (New York: The Greystone Press. 1942. Pp. x, 337. $3.00.)

A great many books, pamphlets, and articles are now written concerning the past and the future of Central Europe. The literature in question is mostly suffused with sentimental or tactical considerations concerning the future, and almost every author has an axe to grind. The work of Josef Hanč, Czechoslovak consul-general in New York, is undeniably also

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strongly influenced by the tragedy and the hopes of his native country; yet it is one of the most serious, fair-minded, and conscientiously documented books on the subject.

The author includes the Danubian countries, the Balkans, and the Baltic states within his investigation. He describes the peace settlement of 1919, the quest for stabilization, the years of crisis, and the failure of the appeasement policy, both that of the Western Powers and that of the Russians. On the basis of this historical material, with due regard for the economic issues, the author describes the probable future of Central Europe. His main conclusion is of great significance, and is not sufficiently recognized by students of the problem: "A fatalistic view of German, Russian, or any other domination of Eastern Europe is one of the most unfortunate political assumptions. The Poles, Czechs, Slovaks, Serbs, Slovenes, Croats, and Bulgarians, altogether some sixty million people, are Slavs. The rest of the eastern Europeans, i.e., the Finns, the Baltic peoples, the Austrians, Magyars, Roumanians, Albanians, Turks, and Greeks, belong to other ethnic groups. Supposing that, having no other choice, the majority of Slavs should prefer Russian protection to that of Germany; inevitably the non-Slav groups would be drawn within the German or other power political orbits" (p. 302). The opposite solution, an Eastern Europe under German domination, would inevitably arouse a self-protecting Pan-Slavism against the Pan-Germanistic tendency.

Facing this dilemma, there appears no other answer to the problem than the unification of this territory in some form of federalism. Against a current of thought now influential, the author rightly emphasizes that economic problems cannot be solved without an adequate political structure; but such a political structure is again unimaginable without a "certain minimum of common political, cultural, and economic traits." This uniformity again cannot be created without deep social changes in many of the countries involved.

Upon all of these, and some other, problems, Mr. Hanč argues forcefully and convincingly. On only one of his suggestions is the reviewer unable to follow him. This is when he argues for the "regionalization of power" in Eastern Europe. Such a regionalization of power would be a very dangerous experiment without the establishment of a super-power system over Eastern Europe itself. Without the sovereignty of such a structure, under the guidance of the democratic powers, the mosaic of Eastern Europe, burdened by the hatred complexes of the past and the inexperience of its peoples in the democratic way of life, could never come into a state of peace and stabilization.

OSCAR JÁSZI.

Oberlin College.

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The Disarmament Illusion. By MERZ TATE. (New York: The Macmillan Company. 1942. Pp. xiv, 398. $4.00.)

It is impossible to say anything about the present work before commenting on the absurd and misleading title—a title assigned, apparently, by a publisher in the interest of commercial promotion. The author's own title for the book (p. ix) seems to have been *The Movement for a Limitation of Armaments to 1907*. The volume consists of an historical analysis and interpretation, and not, as might be inferred, a denunciation of a pacifist illusion. The nearest to such a position that the author comes is to hold that the problem of the reduction of armaments cannot be solved independently of a solution of political problems, particularly that of revision of the existing legal and political set-up. Such a view was not unknown in Homer's time, and the author does not seem ready to deny all possibility of progress in this direction, although she does state the situation at one point (p. 347) in curiously Berchtesgaden language.

Apart from this problem, our report upon this contribution from the Harvard and Radcliffe Bureau of International Research must be somewhat mixed. The study was written as a doctoral thesis and retains some of the qualities peculiar to that type of composition. There is also in evidence that curious mixture of sophomoric profundity ("The great movements in history . . . have their roots in bygone ages") with dependence upon others, regarded as "authorities," although much of the lavish citation of other writers seems traceable to an effort to picture currents of thought or opinion. Finally, the author has a tendency, while letting in the light upon one conventional pattern of thought, to adhere to another, viz., that large armaments inevitably produce war, even while—at one point (p. 358)—demonstrating in the very next sentence the dubious soundness of that cliché. Perhaps we should only say that the problem treated is both extremely complicated and extremely delicate, and that the author may not have thought over all of its aspects as thoroughly as might be done.

However, it must be recorded also that the volume provides fascinating material for a student of the problem of disarmament in its political aspects. On the whole, he will not find that the problem contains any elements not by now thoroughly familiar. If the problem has not been solved, this is traceable, not to lack of knowledge on the part of serious students, at least, of what needs to be done, but to the fact that such students possess no public authority, and to the generally backward state of intelligence and feeling in the public on such matters, which prevents such action being taken by those in positions of power in the state.

PITMAN B. POTTER.

Oberlin College.

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Our Enemy Japan. By Wilfred Fleisher. (Garden City: Doubleday, Doran and Company. 1942. Pp. xi, 236. $2.00.)

Japan's Continental Adventure. By Ching-Chun Wang. (New York: The Macmillan Company. 1941. Pp. 224. $2.00.)

Wilfred Fleisher, author of *Our Enemy Japan*, possesses a rich background of knowledge and experience gained during a long and successful career as editor of *The Japan Advertiser*, which, prior to its recent sale to Japanese interests, was the only foreign-owned English-language newspaper in Tokyo. It is thus obvious that whatever Mr. Fleisher has to say about Japan is of interest.

The present small volume is a "war" book, characterized by certain limitations, but within these the author has succeeded in making a number of contributions of value. He gives a clear, though popular, treatment of the return to power during the past eleven years of the Japanese military. A chapter on "Japanese Leaders" contains brief but effective pen portraits of Prince Kanin, Prince Fushimi, General Sugiyama, Admiral Osami Nagano, Marquis Koichi Kido, Premier Hideki Tojo, General Shunroku Hata, and Admiral Yamamoto. These sketches will be welcomed by those seeking a closer view of personalities in the Japanese scene.

The discussion of "The Japanese Army" (Chap. 5) is particularly worth while. "The Japanese army is much more than an instrument of policy. It is the directive force in Japan, the arbiter of the nation's destiny, the mainspring in domestic as well as foreign affairs, the institution to which all administrative functions are subservient" (p. 90). Mr. Fleisher is frank in admitting that: "The sudden rise of the military power in Japan at the time of the Manchurian invasion in 1931 came completely by surprise to Japanese in other walks of life" (pp. 93–94). He holds also that: "From the very outset [1937] there was never any enthusiasm among the Japanese people for the war in China. . . . Every Japanese knew that Japan's objective in China was conquest" (pp. 101–102).

In Chapter 8, "The Washington Negotiations," Mr. Fleisher, who at the time was Washington correspondent at the State Department for the New York *Herald-Tribune*, presents a very suggestive account and interpretation of the American-Japanese diplomatic discussions preceding the outbreak of war. Of the chief Japanese negotiators, he says that Nomura was a "pawn who was used to further Japan's schemes without a knowledge of those schemes." The Kurusu mission was only a "stall for time until Japan's military plans were completed." Mr. Fleisher's treatment of these negotiations is a revealing supplement to the Roberts report on Pearl Harbor.

Japan's Continental Adventure is a reprint of articles and letters which

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first appeared in the American and British periodical press between February, 1932, and October, 1938. As the general title suggests, these articles deal with various aspects of Japan's China policy since the Manchurian "incident" of 1931. They present essentially a Kuomintang interpretation of China's foreign relations during the past decade. It is not surprising that essays covering so wide a field prove of uneven value. There are discussions of the invasion of Manchuria, 1931; Japan's rights and grievances; Shanghai and the League; the sale of the Chinese Eastern Railway; Japan's Pan-Asiatic doctrine; the Japanese "Open Door"; etc.

Dr. Wang is at his best in his treatment of the Chinese Eastern Railway, of which, during the critical years 1920–24, he was vice-president and director-general. Here he writes as a keen observer rather than as a political advocate. Concerning the checkered career of this railroad following the Sino-Russian agreements of 1924, he observes: "To manage a railroad by one government is difficult enough, but to manage a railroad by two nations with five directors appointed by each government, with the Chinese directors speaking little Russian, and the Soviet directors understanding no Chinese, is atrocious" (p. 81).

PAUL H. CLYDE.

Duke University.

Far Eastern War, 1937–1941. By HAROLD S. QUIGLEY. (Boston: World Peace Foundation. 1942. Pp. xi, 369. $2.50.)

Appreciating the fact that no study of war, "written *inter arma*," may claim to be definitive, Professor Quigley has undertaken "to examine the circumstances bearing upon the outbreak" of the Sino-Japanese conflict, "to provide a concise account of the hostilities, to describe political and economic repercussions in China, Japan, and Western states, and to analyze the policies and trace the diplomatic, economic, and strategic maneuvers of the major powers in relation to the war and to Japan's program for a 'New Order' in East Asia and Oceania." For a serious scholar, conscientiously seeking "to deal objectively with available materials," this is indeed a difficult task. But the present reviewer can think of no one better qualified for such a task than Professor Quigley, who here takes up a story which, in his revision of Professor Blakeslee's *The Far East: An International Survey*, he had already brought down to 1937.

The author is at his best in the four introductory chapters—"Progress and Poverty in China," "Militarism and Industrialism in Japan," "China's International Position," "Major Issues in Controversy"—and in the chapters on "The Renewal of War," "The 'New Order' in Occupied China," "The 'New National Structure' in Japan," and "Co-Prosperity in Greater Asia." Here and in his brief "Epilog" he sets forth conclusions from which there can be little dissent: the Japanese have consistently

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acted in pursuit of their own aims and not as tools of Nazi Germany; the dynamic force behind Japanese imperialism is "a race-consciousness entirely lacking in humor, an ideological foundation for integral nationalism beside which Teutonism looks anaemic"; a satisfactory settlement of the conflict "must leave China not only the appearance of independence, but its reality."

The chapter on "Japan and the Axis" and those dealing with the Far Eastern policies of the United States, Great Britain, and the Soviet Union contain a few statements and judgments with which this reviewer cannot agree. Is it true (p. 173) that Matsuoka signed his Neutrality Pact with the U.S.S.R. "under the eyes of Major General Eugen Ott"? Is it correct to say (p. 174) that "after June, 1941, the Pact was a millstone around Japan's over-extended neck," or (p. 175) that "Hitler's invasion of the Soviet Union . . . caught the Japanese unprepared"? It is equally arguable that the Japanese had shrewdly prepared for exactly what happened and that the Moscow Pact, by pledging them *not* to coöperate with Hitler against the Soviet Union, left them free for more profitable action toward the south. Was the American policy of allowing the continued shipment of petroleum and other war supplies to Japan, in order to postpone the inevitable Japanese-American clash, as wise as Professor Quigley (pp. 203–204 and elsewhere) appears to think? And is it accurate to characterize the Craigie-Arita agreement (p. 238) as "little more than a diplomatic formula, a clever evasion of specific commitments"?

These questions must not be taken as disparaging the real excellence of Professor Quigley's work. He has produced a valuable and timely book, and the inclusion of fifty pages of pertinent documents, as well as a carefully selected ten-page bibliography, will make it extremely useful to those in search of a reliable guide through the mazes of Far Eastern politics.

G. NYE STEIGER.

Simmons College.

The Dutch in the Far East. BY ALBERT HYMA. (Ann Arbor: George Wahr, Publishers. 1942. Pp. vi, 249. $1.75.)

The Structure of Netherlands Indian Economy. BY J. H. BOEKE. (New York: Institute of Pacific Relations. 1942. Pp. x, 201. $2.50.)

The Netherlands Indies and the United States. BY RUPERT EMERSON. (Boston: World Peace Foundation. 1942. Pp. 92. $0.50 cloth, $0.25 paper.)

The title of the book by Professor Hyma is wanting in accuracy. Over half of the body of the volume has very little to do with the Dutch in the Far East. A more truly descriptive title would have been "The Dutch and Far Eastern Trade," or simply "Dutch Commercial Expansion." In

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fact, the book consists of a collection of essays on Dutch trade expansion. The titles of the chapters are as follows: "The Secret of the Dutch Commercial Policy," "The Beginnings of Dutch Sea Power in the Far East," "The Voyage of Henry Hudson and the Founding of New Netherland," "The Anglo-Dutch Struggle for the Freedom of the Seas," "The Occupation of the Malay Archipelago," "The Conquest of Formosa and the European Trade with Japan," "Decline, Recovery, and Further Expansion," and "The United States and the Dutch East Indies."

The chapters vary considerably in quality. The chapter on "The Secret of the Dutch Commercial Policy" is excellent. In it Professor Hyma makes some telling points against the thesis of Max Weber on the relation of Calvinism and capitalism. Other chapters are good primarily as essays in bibliography. The last two fall much below the level of the others, the closing one seeming to be based wholly on tourist bureau and information office material.

Here and there the book reflects a patriotic enthusiasm one does not expect to find in scientific historical writing. Sometimes this is accompanied by odd lapses, as for example: "To understand how this little republic was able to monopolize all the European trade with Japan from 1642 to 1859 requires more than a discussion of physical geography and other obvious factors that have so often been analyzed before" (p. 53). Certainly the Japanese trade monopoly of these years had little to do with factors in Holland, and even more certainly it was not due to Dutch qualities of greatness. Nor was the volume of the trade ever very great.

The book also contains some amazing statements to proceed from a scholarly historian. The views expressed by a student in a dissertation are accepted as the views of the university, and the views expressed by a professor in a book review are stated to represent "the official opinion of the faculty in this university"! (p. 6). In a serious historical essay, the author finds occasion to dispute the accuracy of a certain story which recently appeared in the daily press (p. 174). And what is one to make of a statement like the following: "Since Great Britain is a much greater European power than is The Netherlands, it seemed fitting for the British to control more than one-half of the combined rubber production, just as in recent years the British government has insisted that in the Royal-Dutch Shell Co. more than half of the stock shall be British-owned rather than Dutch"! (pp. 189–190).

Despite these peculiar lapses which detract from the quality of the work, the earlier essays contain much interesting material and some excellent analysis.

For many years Professor Boeke has been a leading student of Netherlands Indies economy. He knows the Indies from long residence and service. Before becoming professor of tropical colonial economy at Leiden

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University, he was advisor to the Peoples Credit System and professor of economy at the Indies Law School. For many years he has developed the theory of dual tropical Eastern economy. "Oriental economics," so Boeke states his thesis in the present work, "is essentially different from Western; and hence Western economic doctrines are not, or are only partly, applicable in the Orient: markets, price formation, the theories of demand and supply, of enterprise, of trade cycles, and so forth—in short, all the important problems of Western economic theory—do not present themselves, or at most do so only partially and slightly to Eastern society." The book here reviewed presents a description and analysis of the structure of Indies economy from this point of view.

Boeke does not deny that the two economies interact upon each other, though at times he seems to maintain that in spite of their juxtaposition the two operate in isolated spheres. The two interact upon each other, but they nevertheless remain distinct and wholly different. The thesis is pushed rather far and often in much too absolutistic a fashion. Nor is the author always consistent. There are passages which seem to contradict his main thesis. Economic life in the East Indies during the past decade and a half had become much more integrated than Boeke describes it. However that may be, Boeke's point of view enables him to make a penetrating and fruitful analysis of East Indies economy.

The book concludes with three chapters on the population problem and the "drain" theory. All students of colonialism will be much interested in these chapters. After examining the proposed solutions to the population problem of Java, he concludes that "a real solution can be found only by instilling into the masses of the people a Western spirit which will bring forth a rationalistic view of sex relations and a dynamic view of production." He makes some incisive criticisms of the drain theory, especially as applied to the East Indies. The book is one of the best written on the Indies in a long time.

While Professor Emerson, in his study, is interested primarily in the future of the East Indies, he first lays the basis for an intelligent discussion of the problem by giving an excellent summary of the history of Dutch colonial policy and administration and the economic development of the dependency. He examines the stake of the United States in the Indies and concludes that Holland, Japan, and China "appear to be concerned more directly and vitally" than this country. The primary and direct interest of the United States in the Indies "does not extend beyond the maintenance of a situation in which they are neither controlled nor seriously menaced by a hostile power"; but the United States also has a general interest of seeing the Indies knit into the fabric of world peace and making the largest possible contribution to world prosperity. Emerson holds that "the one type of solution which would satisfy all the basic

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requirements in connection with the Indies would be one arrived at through international coöperation and operating under international guaranties"—in short, a renewal and extension of something like the mandates system.

That the Western Powers will not be able to resume in Southeastern Asia where they left off after the Japanese invasion is clear, but it is not easy to determine what should be done. Certainly the future status of the Indies cannot be discussed apart from the future status of similar areas throughout the world. Secondly, constitutional developments within the Dutch empire have been extremely rapid during the past few years. The Indies had acquired a large measure of autonomy; an imperial conference has been called to convene immediately after the war to draft an imperial constitution; Van Mook, born and reared in the Indies and known for his vigorous Indo-centric views, is now minister of colonies; as a sort of substitute for the parliament, there has been created an advisory council containing representatives from each of the three parts of the empire; and a Javanese has been made a member of the cabinet. The Dutch government in London is now more of an imperial than a national government. If these trends are accepted by all parts of the empire, how will the demand for external control be justified?

It is extremely difficult to plan for post-war construction, for the world may be vastly different when the war is over. Whatever the difficulties, however, studies like this by Emerson must be made. He has set a high standard for others to follow.

AMRY VANDENBOSCH.

University of Kentucky.

Treaties and Constitutional Law: Property Interferences and Due Process of Law. By WILLARD BUNCE COWLES. (Washington, D. C.: American Council on Public Affairs. 1941. Pp. xv, 315. $4.50 cloth, $3.50 paper.)

It is not unreasonable to expect that when this war is over, the treaty-making power will assume renewed importance. If so, judge, lawyer, and student alike will find this volume by Dr. Cowles a valuable aid in interpreting the effect of treaties upon domestic law. The work is characterized not only by an unusual clarity of expression and excellent factual presentation of cases, but by a purposiveness which is delightful. From start to finish there is an orderliness in the method of attack which reminds one of a first-rate mystery story. Dr. Cowles has problems to solve; he discovers his clues; and from there on the hunt is relentless.

The book seeks to answer two basic questions: "first, whether or not the due process and just compensation clauses of the Fifth Amendment . . . constitute limitations upon the provisions of the international treaties of the United States, in their character as domestic law in the United

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States; and second, if they are and if a court should hold such a treaty provision binding upon it, notwithstanding the constitutional consistency, would there be a duty on the part of the United States to assure the property-owner just compensation, which he could enforce against the United States as a claim founded upon the Constitution?" (p. 15.) The answers reached by Dr. Cowles are both in the affirmative. The due process clause is a limitation on the treaty-making power, and the United States does have a duty to assure property-owners just compensation when treaties in conflict with constitutional guarantees interfere with property rights.

The key to the analysis of the problems under consideration lies in what Dr. Cowles calls the "scope-depth distinction." If the object of legislation be within the constitutional "scope" of congressional authority, the question still remains of the "extent" or "depth" to which Congress may regulate that object. Due process is a "depth" limitation. Thus, while the "scope" of the treaty-making power is broader than the interstate commerce power, as is illustrated in Missouri v. Holland, it does not follow that the "depth" limitations are not substantially the same.

This reviewer feels that Dr. Cowles' analysis has greater validity in logic than in experience. While an imposing array of citations may be given to substantiate the position that treaties violating "depth" limitations will be held void (p. 294), the fact would seem to be that none has been so held unless treaty provisions restricted in their application by the rule of dual construction be counted. Furthermore, the recently decided case of United States v. Pink (February 2, 1942) apparently indicates that the majority of the justices of the Supreme Court have not yet reached a point where they will wholeheartedly accept the conclusions reached by Dr. Cowles.

WILLIAM O. FARBER.

University of South Dakota.

Introduction to Social Science. By GEORGE C. ATTEBERRY, JOHN L. AUBLE, ELGIN F. HUNT, AND OTHERS. (New York: The Macmillan Company. 1941–2. Vol. I, pp. xx, 668; Vol. II, pp. xx, 800. $7.00.)

The need to acquaint youth with the world in which they find themselves has been the stimulus for several recent "integrated" social science texts. (See this REVIEW, Dec., 1940, p. 1246, and Oct., 1941, p. 1022.) The two volumes here reviewed, the work of fifteen teachers of the survey course required of all freshmen in the three Chicago city junior colleges, merit consideration by all teachers in each social science who are not satisfied with their students' understanding of and concern with the subject-matter of their courses. The undergraduates' indifference may be due, not to natural perversity, but to the lack of knowledge of related factors, out-

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side the discipline being studied—a knowledge which instructors too often assume is effortlessly absorbed from their environment by all normally intelligent persons.

Nor is this indifference cured by requiring every student to take the introductory course in each social science. That is impracticable for the present accelerated programs. It is also pedagogically unsound. Average students are not likely to retain the bits of knowledge from each course and at an appropriate later time fit them together so as to make significant and meaningful the social situations in which they find themselves. Much more reasonable, when the students' interests are considered, is the "problem approach" which the authors of this survey utilize. This approach frees them from the obligation to include irrelevant materials customarily treated in an introductory course for any one discipline. They use only materials pertinent to problems selected for their "closeness to the life of our time and presumably to the actual experiences and situations confronting the student." Quite consistently, the authors hold to their objectives: "to introduce the student to the problems of contemporary society; to find what groups are most affected by these problems; to show by relevant historical data how these problems came to be and what has already been done about them; and to demonstrate in what way economics, sociology, and political science contribute to an understanding and the possible solution of these problems."

While the main divisions (Social Relations and Social Problems, The Competitive System and Social Problems, Government and Social Problems) are laid out in the belief that "the separate departmental disciplines . . . have a logical unity of their own," and hence that "nothing is to be gained by an artificial attempt to disguise this fact," the reviewer is impressed with the extent to which the solution of problems in each division depends on governmental action. These problems are usually mentioned in texts on American government, but they tend to be obscured in the systematic description of each agency's form and functions, what its relations with other agencies are, and how far its authority extends. Reluctantly the reviewer concedes that government may become much more significant to the individual citizen who is not a political scientist and has no intention of becoming one when its function is directly related to a problem which concerns him. Government's essential rôle is more clearly comprehended because relevant data from other social sciences are included. How else can the study of politics be the master science which Aristotle conceived it to be? Even the problems classed as governmental require for their understanding a perception of historical development and of socio-economic factors.

Introduction to Social Science incorporates an instructional aid which should be more generally used. At the end of each chapter is a selected

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list of its "terms to be understood," as well as the more usual "questions for discussion" and a carefully chosen bibliography. Tables and figures are abundantly provided.

In a text covering so many fields, there are inevitably some minor defects. Some are attributable to "too many cooks." Materials are not always adequately synthesized. The result may be merely a repetition, without reference to previous use, as when similar data on urban housing appear in Chapters 5 and 8 (pp. 146–7, 234–6). In other instances there is not enough similarity. The 1940 census figures are variously interpreted as to a back-to-the-farm movement (I, pp. 50, 117, and II, 83). "Nearly a million youths" (I, p. 208) become "nearly 900,000 young people" only seventeen pages farther on. Are there more early marriages in recent decades than there were fifty or more years ago, or not? (I, pp. 43, 91, 244) Can it be true that "only one family in five" owns a motor car while there is "a car for every four persons"? (I, pp. 318, 576). Occasionally an author condenses rather than selects, leaving a skeleton of dry facts, as in the chapter on Political Parties. The significant content of that chapter might have been put in the next chapter on Pressure Groups and Invisible Governments without unduly extending the latter.

Other defects arise from a too literal "closeness to the life of our time." The closeness is so transitory that many of the details are out of date before the text reaches the student. Problems of protecting the consumer are left with the late OPACS and NDAC. The latter, instead of OEM, is credited with the weekly bulletin *Defense* (II, p. 135), whose title had been changed to *Victory* before the volume was published. Problems of unemployment are discussed with little to suggest that they would soon become insignificant, at least "for the duration." Why not leave much of this kind of data to the weekly news magazine instead of burdening the user of the text with a responsibility for keeping its details up to date?

Despite these minor defects, the authors have produced an excellent text. They have demonstrated that coöperative effort can be fruitful. They have successfully breached the walls between the separate disciplines, thereby enabling young citizens more readily to understand and more confidently to attack the major social problems of their time.

HOWARD WHITE.

Miami University.

Social Research; A Study in Methods of Gathering Data. BY GEORGE A. LUNDBERG. New York: Longmans, Green, and Company. 1942. Pp. xx, 426. $3.25.)

Political scientists who have been impelled to teach courses in methods of study have long been familiar with Professor Lundberg's earlier (1929) edition of *Social Research.* They have probably tried using it in classes

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and have undoubtedly found it valuable in training young men and women how to assemble political data. They have also, beyond question, lamented the fact that there does not exist a single good text in methods of political science. One can say this with due respect to Swenson and Spahr, who wrote a good general work on the techniques of studying and preparing materials, and Lasswell, Gosnell, Rice, Neprach, and other fellow-politicos who have offered interesting suggestions in limited fields. Since Lundberg published his first edition, he has issued a *Foundation of Sociology* (1939) wherein he pled for a systematic, quantitative approach to societal phenomena. Needless to say, Lundberg's more highly developed sociological theory has greatly influenced the second edition of *Social Research.* It has also established a cult, of which Dodd is the most energetic practitioner; and it has produced the inevitable reaction among the sociologists, who differ sharply in their attitudes toward Lundberg's theories of social inquiry. Roughly, there are three classes of sociologists: those who prefer Lundberg's insistence on rigidly formulated quantitative procedures; those who favor excogitation about essences, motives, and ethical control; and those who are too tired to bother and who limit themselves to dull and uninformative descriptions of easily recognized social institutions, such as marriage, the city, and war.

It would not serve our purpose to enter the lists and do battle with any of these adversaries, or even to don the expert's uniform and report the progress of the controversy, *à la* Harry Elmer Barnes. Suffice it to say, Lundberg's first four chapters are suggestive and reasonably sound. Some critics seem to find them burdened with words and phrases of doubtful validity and a specious clarity; but I did not find them too "difficult" for the beginning student. Notwithstanding the persistent antagonism to more careful sampling, clearer definitions, and more vigorous prosecution of scientific inquiries, the trend toward a real science of society is quite apparent—and Lundberg deserves credit for his indefatigable advocacy of quantitative studies.

The chief value of this book for political scientists lies in the chapters dealing with the technique of identification, aggregation, and interpretation (the schedule, questionnaire, attitude polls, sociometric scales, and sociographic methods).

For teaching purposes, these chapters are very good. The political science teacher could assign readings on the construction of questionnaires, interview forms, scoring cards, and personality rating scales—and then require his students to draw up a questionnaire for the determination of attitudes on current issues; prepare a systematic interview of one class of civil servants with the aim of discovering areas of tension; organize an appraisal system for measuring administrative performance; and organize a systematic survey of personnel within a given municipal department.

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Although these later chapters are quite useful, they lack the qualities of simplicity, logical order, and material exclusiveness essential to the job of effectively imparting to students precise skills in gathering data, classifying them, interpreting them. And, as I said earlier, no treatise on methods of "social research" is satisfactory for use with students of political science. The sociologists have been so busy bowing down at the shrine of Sorokin and complimenting themselves on their priority as high priests of social research that they have not observed the demand for more precise study of personalities, institutions, and situations which intrigue the political scientist.

For example, Chapters IX, X, and XI include too many illustrations taken from fields which only remotely interest the political scientist; and there is inadequate discussion of opinion polls, marginal voting, municipal administration appraisal forms, personnel rating, and regional surveys. As a matter of fact, this book seems to be best suited for the use of potential directors of research projects; and if such persons do not have the imagination to profit by Lundberg's suggestions, they would better transfer their activities to some other field.

Roy V. Peel.

Indiana University.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

Walter F. Dodd's *Cases and Materials on Constitutional Law; Shorter Selection* (3rd edition, American Casebook Series, West Publishing Co., pp. xxviii, 894, $6.50) resembles in form and topical arrangement his second edition (shorter selection) of 1937. The contents of the volume have been thoroughly revised to include briefs of some two dozen important cases decided during the five-year period ending January 1, 1942. The author has added several new comments on subjects such as the doctrine of reasonable doubt, facts in constitutional cases, principles of constitutional construction, and administrative determinations of fact. A few sections of the second edition have been combined into one in this new edition. The chief shifts in case offerings are evident in the chapters on due process and equal protection, foreign and interstate commerce, and judicial interpretation and enforcement of written constitutions. Several old cases which did not appear in the second edition have been given recognition in the present volume. For example, a selection from the opinion in The Genesee Chief v. Fitzhugh, 12 Howard 443, makes a point on *stare decisis* in jurisdictional questions. Excerpts from the opinions in Western Metal Supply Co. v. Pillsbury, 172 Cal. 407, and Crowell v. Benson, 285 U. S. 22, have been used to clarify certain consti-

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tutional aspects of the powers of administrative agencies. Annotations have been revised adequately. Although political and civil rights perhaps receive too little emphasis, nevertheless reasonably well-balanced case selections place this volume in a class with the best of reference books suitable for use in undergraduate courses on American constitutional government.—ALDEN L. POWELL.

The seventeenth volume of American diplomatic correspondence prior to 1860, under the editorship of William R. Manning, Department of State, is *Diplomatic Correspondence of the United States: Canadian Relations, 1784–1860,* Vol. II (Washington, Carnegie Endowment for International Peace, pp. xxxviii, 1016, $5.00), the second volume in the series on Canadian relations, covering the period 1821 to 1835. Two further volumes will complete the Canadian series, thus supplementing the three volumes on Latin-American independence and the twelve volumes on Inter-American affairs. In this second volume are one thousand pages of documents, a detailed subject index, a numerical list of the documents, copious cross-references, lengthy explanatory footnotes, and several maps. Much of the correspondence deals naturally with Canadian-American boundary questions, North Atlantic fisheries, and St. Lawrence navigation. Documents relating to West Indian affairs are also included. In the light of recent developments in inter-American and Canadian-American relations, it is interesting to note in documents number 854, 855, 856, 870, and 879, all of them sent by Richard Rush, United States minister to Great Britain, to John Quincy Adams, United States secretary of state, in 1823 and 1824, that the United States sought to apply the Monroe Doctrine to prevent further British colonization on the Pacific Coast south of the fifty-first degree of north latitude and north of the fifty-fifth degree—a policy which the British government firmly resisted, declaring that the unoccupied parts of America were "open as heretofore to colonization by Great Britain" and "that the United States would have no right whatever to take umbrage at the establishment of new colonies from Europe in any such parts of the American Continent" (p. 420).—H. GORDON SKILLING.

J. Maynard Keech, instructor in economics at Duke University, has made a careful study of *Workmen's Compensation in North Carolina, 1929–1940* (Duke University Press, pp. 198, $3.00). The appendix contains a useful summary of the essential provisions of the North Carolina legislation, in layman's language. The text includes a brief history of the original statute, with its subsequent amendments and judicial interpretations. Scant account is given of the "intangible factors" which delayed the passage of the act until North Carolina was the forty-fourth state in

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the nation to leave the common law. Have these "subjective forces" been so dissipated since 1929 that they do not enter into the problem of administration? The appendix presents an extensive bibliography, but it would appear that evaluation is based mainly on data obtained in the files of the Commission or from interviews and correspondence with state officials. Although the analysis of administration depends on observation as well as bibliography, the point of view seems to remain that of the administrator, with little emphasis on the human incidence of the act. Since the approach is "objective measurement," considerable use is made of statistical and tabular material. The summary is mildly laudatory; the chief criticism, the lack of funds; the principle recommendation, to make the Commission self-financing, independent of legislative appropriations. No attempt is made to compare the North Carolina act with legislation in other states. If, however, a similar monograph were available for each state, one would have an excellent basis for a comparative study of workmen's compensation, with a possibility of standardization.—MARIAN D. IRISH.

Organized Anti-Semitism in America; The Rise of Group Prejudice During the Decade of 1929–1940 (American Council on Public Affairs, pp. 191), by Donald S. Strong, is a study of 121 anti-Jewish groups in the United States. Particular attention is devoted to the German-American Bund, the Silver Shirts, the National Union for Social Justice and the Christian Front, the Defenders of the Christian Faith, the Edmondson Economic Service, the American Vigilant Intelligence Federation, the Industrial Defense Association, the Paul Reveres, the James True Associates, the American Christian Defenders, and the Order of '76. Other groups are treated more briefly. The study is based chiefly upon the publications of the societies and the hearings of the Dies Committee. The author sees a common background in all countries for anti-semitism: an anti-revolutionary sentiment, a prolonged depression, and an upsurge of national fervor. This intense nationalism is directed against the alien—and the Jew is always an alien. Furthermore, the Jew ideologically typifies communism, and hence becomes the target or scapegoat for the anti-revolutionary groups. The author identifies fascism with anti-semitism, but declares that there is not the leadership for a united front in the United States. He concludes that there will be no formidable persecution of Jews in this country, largely because they comprise only 3.69 per cent of our population. Dr. Strong gives a qualitative analysis of the antisemitic organizations and their propaganda techniques, but he has not attempted an exact quantitative appraisal of the effect on public opinion. The book lacks an index.—MARY EARHART DILLON.

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The *Bibliography of the Official Publications of Louisiana, 1803–1934* (No. 19 American Imprints Inventory, Louisiana Historical Records Survey, Service Division, Work Projects Administration, Hill Memorial Library, Louisiana State University, pp. xiv, 579, mimeo.), compiled by Lucy B. Foote, is a valuable aid to the study of state and local history and government. The greater portion of the bibliography was first compiled as a thesis in the University of Illinois Library School, but was later expanded to cover the territorial period. The territorial publications, 1803–1812, precede the list of state documents. A brief statement outlining the establishment and functions of each territorial governmental unit accompanies the list of its publications. Analytical title lists of acts, House and Senate journals, bulletins and circular series, and other numbered or chronological series are given in full. The bibliography of Louisiana state documents is arranged alphabetically by the official title of each agency in corporate entry form. A brief historical sketch of the department or office precedes the entry of the required report. Other serial entries follow the report. Bulletins and circular series are listed in numerical order by title, but irregular series of publications are listed in chronological order. Use of the bibliography is greatly facilitated by an index of personal names, subjects, and key words. As an additional aid to the research scholar, library holdings for the documents are listed. Miss Foote is to be commended for the excellence of her compilation. It might well serve as a model for similar bibliographies.—EVERETT S. BROWN.

In *American Parties and Elections*, 3rd edition (D. Appleton-Century, pp. 790, $4.00), Edward McChesney Sait presents a second revision of his well-known textbook within a period of three years. The presidential election of 1940, the passage of the Hatch Acts, and other party legislation offer justification for a revision which has no significant new interpretations of party life. Congratulations are due Professor Sait for keeping his book in the same number of pages. Students of political parties will continue to admire the systematic, comprehensive, and clear presentation of much unwieldy material. Many teachers will continue to use the volume in their classes. Liberal scholars may be puzzled by Professor Sait's objectivity in contemporary politics. Numerous quotations from columnists like Kent, Lippmann, and Johnson seem to give an anti-New Deal slant to recent party history. A sample sentence reflects the overtones of discussion of current politics. "While many (self-styled) liberals in the United States denounce foreign dictatorship, they pursue at home the very tactics that may wreck consensus. They are busily engaged in sapping and mining—in sowing the seeds of class conflict" (p.7). One wonders why the Republican loss in 1934 was "a sinister phenomenon"

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(p. 278), and why the Farm Bloc "recalled the sinister course of insurgency" (p. 268). Coincidentally, W.P.A. "scandals" receive extended comment, while Teapot Dome is overlooked. Some skeptics may doubt that Taft was "one of the most constructive Presidents in our history" (p. 389).—J. B. SHANNON.

The first full-length work on the life of the present Secretary of State has recently been written by Harold B. Hinton and is published under the title *Cordell Hull; A Biography* (Doubleday, Doran and Co., pp. xi, 377, $3.00.). The book is created from the point of view of a Washington correspondent and is filled with such intimate bits of information as are gained in the journalist's routine. Personal episodes are drawn together in an organized story, with the addition of other interesting materials. More space is devoted to the attitudes of Mr. Hull and the people with whom he has dealt than to the substance of the national policies which the Secretary has helped to shape. The foreword is an encomium by Sumner Welles, and it rings with convincing sincerity. The discussion of President Roosevelt's poorly advised note to the London Monetary and Economic Conference of 1933 is a valuable section of the book. Of even more interest is the account of Mr. Hull's negotiations and heart-to-heart talks with the delegates at the Seventh International Conference of American States in Montevideo during the same year. The Secretary's work at that conference, it may well be contended, constitutes one of the most brilliant accomplishments in American diplomacy; and Mr. Hinton, who was present, had an excellent opportunity for close-up observation. The author's easy reportorial presentation is not always cramped by zeal for fastidious exactitude. The chapter headings "Father of the Income Tax" and "The New Prime Minister," and the description of the *I'm Alone* case, in which the coast-guard cutter chases its prey "halfway across the Atlantic," might, for example, cause the meticulous academician to arch his eyebrows. On the whole, however, Mr. Hinton has done an excellent and interesting job in writing the first of the biographies regarding a statesman who has left his mark upon our foreign policy, and who is sometimes described as the most courteous gentleman in Washington.—BENJAMIN H. WILLIAMS.

Country people are rich in children, but poor in wealth and income. Having established the disturbing facts that farmers have more children and less income than city people, and that the poorest agricultural areas are likely to have the largest proportion of children, George A. Works and Simon O. Lesser, working under the auspices of the General Education Board, proceed to analyze the perplexing problem in *Rural America Today—Its Schools and Community Life* (University of Chicago Press,

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pp. xx, 450, $3.75). The authors are professional educators who, convinced that the school is the natural nucleus of community life, hope to adapt education for children, youth, and adults to the needs of rural society. Their opinions are well supported by specific evidence. Thorough reform will require the enlargement of school districts to obtain better equipment at lower per capita cost, provision for federal and state financial aid, the adjustment of the course of study to suit the needs of country children with emphasis upon vocational training and guidance, the "vitalization" of instruction by substituting interesting projects for dull textbook assignments, the inculcation of social responsibility in respect to public health, welfare, recreation, and conservation, the stimulation of neighborhood pride by arousing the enthusiasm of the school children, and the recruitment of thousands of inspired teachers who can assume leadership of the community. Such a miracle has actually been accomplished in a few places. If our democratic ideal is to survive, rural education must be improved. The problem of rural welfare is nation-wide, but the solution lies in local planning and community initiative.—JOHN E. BRIGGS.

As the new academic year opens, college teachers of American government have available three texts, among others, which have been published during the last spring or summer. They are: William Anderson's *American Government* (Henry Holt and Co., rev. ed. pp. xi, 922, $4.00), Harold Zink's *Government and Politics in the United States* (Macmillan Co., pp. xiii, 1091, $4.00), and Frederic A. Ogg and P. Orman Ray's *Introduction to American Government* (Appleton-Century Co., 7th ed., pp. ix, 1021, $4.00). These authors are well known for their competent and accurate scholarship. The emphasis in this review, therefore, may be directed to an appraisal of the teachability of these texts. With the assistance of the teacher and the expenditure of the appropriate amount of intellectual energy by the student, will they aid him to think intelligently about political problems and, as a responsible citizen, to contribute to their understanding and solution? Professor Zink, whose text has made its first appearance, attempts to answer this query by familiarizing the student with the "human element" in government. Accordingly, one will find, besides an adequate discussion of the formal aspects of the American political system, considerable emphasis upon the rôle of political parties, pressure groups and pressure politics, and public opinion. As might be expected, Mr. Zink has written penetrating discussions of the political boss, political machines, pressure groups, and public opinion. By a clear and easy style, coupled with a generous resort to apt and vivid illustrations, the writer contributes worthily to disabusing students of the notion which they hold quite generally that American government is a "dry" subject. In

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the second edition of his book, Professor Anderson announces in the preface that the experiment which he performed four years previously in the first edition, of giving the functional approach "a more thorough trial," has proved its value as a teaching technique. The reviewer concurs in this conclusion. Professors Ogg and Ray, who brought out the first edition of their textbook twenty years ago, continue in the seventh edition to believe that, despite "increasing interrelationships," each of the levels of government "is still largely self-contained." The authors express the hope that "the fuller treatment of numerous matters of ever-growing importance" in their book will encourage the student to further inquiry. To assist him in this quest, "nearly one-fifth of the total space is devoted to apparatus in the form of footnotes and chapter bibliographies, rather than text" in order "to provide these aids generously for those who can find time to make use of them."—GEDDES W. RUTHERFORD.

In writing *The Presidential Campaign and Election of 1892* (Stanford University Press, pp. 268, $2.75), George Harmon Knoles obviously did a prodigious amount of research into biographies, memoirs, and correspondence of political leaders and into newspapers and journals of fifty years ago. The result might easily have been a dull, dry compendium of factual information; but it is not. The facts are present in abundance, but they are presented in a literary form that makes them almost fascinating reading. This is especially true of the narrative of the political background and play of political forces in both major parties and the Populist party in the period preceding the national conventions. In scope, the work covers the negotiations in each party prior to the conventions, the sessions of the conventions, the campaign, and an "analysis of results and general conclusions." This last chapter is less satisfying than the ten narrative ones that precede it. The contest of 1892, says the author, "represented an imperfect alignment of political forces" that was "revealed with great clarity" in the campaign of 1896. Mr. Knoles can, then, do another and greater service by continuing his study, along the present lines, into the more important and more exciting Bryan campaign of 1896.—HAROLD R. BRUCE.

Municipal services cost money, but do not necessitate waste and inefficiency in its spending. The more emphasis upon sound business practices in municipal fiscal administration, the greater the amount of governmental services obtainable for the taxpayer's dollar. This is the justification offered for Lloyd Morey and Orval W. Diehl's *Municipal Accounting* (John Wiley and Sons, Inc., pp. xiv, 415, $4.50), labeled as successor to Mr. Morey's 1927 *Manual of Municipal Accounting*. The book sets forth the underlying principles for municipal accounts and standard terminology

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for use therein, as developed by the National Committee on Municipal Accounting. Based upon these, it supplies a detailed procedure for the development of a complete system of municipal accounts. The study is, of course, too technical for general reading, being intended as a reference work for municipal officials and students of finance, and as a guide-book for accountants, bookkeepers, and others concerned in the actual installation and operation of municipal accounting systems. Eighty-one accounting forms and thirty-three sample statements are included. Continuously the study emphasizes that municipal accounting is not merely a matter of financial history, but primarily a matter of making available full information in the form needed for the guidance of officials charged with direction of the city's affairs.—CHRISTIAN L. LARSEN.

In *The Administration of Municipal Legal Services: The Chicago Law Department* (Public Administration Service, pp. vi, 58, $1.50), Robert W. Siebenschuh analyzes and describes the work of the law department of the nation's second city. He describes the decentralized state of the city's legal services prior to reorganization in 1935, the present organization and the results of reorganization, the department's administrative management, the handling of personnel problems peculiar to such a department, and the research work which constitutes a new and valuable phase of its work. By describing the procedure in a hypothetical civil case, the author clearly and effectively shows how the head of the department, through a sequence of carefully planned departmental forms, is able to follow the flow of work in cases from their being taken up by the department to their completion, and is thereby enabled to note maladjustments in organization and practices, and considerably to supervise the department. —H. C. COOK.

With Allied statesmen appealing for the support of colonial peoples, Puerto Rico's bargaining position has improved. To the island's resident commissioner, Bolívar Pagan, the time has seemed propitious for publishing *Puerto Rico, the Next State* (Washington, D. C., printed privately, pp. 108). A judicious selection from the writings of American political leaders seems to demonstrate that our best traditions point to statehood for Puerto Rico. Statistical and descriptive material is arranged to minimize political, economic, and cultural barriers to the island's complete assimilation into the Union. Pagan's own Coalition party is treated more sympathetically than Luis Muñoz Marin's secessionist Popular party, whose control over the legislature is explained as accidental. The author thus glosses over sentiment favoring independence rather than statehood. —WILLIAM T. R. FOX.

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FOREIGN GOVERNMENT AND POLITICS

Confidence in the vitality of the democratic tradition clearly vied with the zeal of the scholar in prompting Professor William E. Rappard to produce his *l'Avènement de la Démocratie moderne à Genève* (Geneva: Alex. Jullien, pp. 445), at this particular time in his nation's and Europe's history. Prefaced by a description of the oligarchical political institutions which Joseph Des Arts and his fellow reactionaries imposed upon Geneva on the morrow of the restoration in 1814, the first half of the monograph traces the gradual liberalization of these institutions between 1820 and 1840 as a result of the pressure of an enlightened parliamentary opposition. Subsequent chapters carry the reader through the turbulent seven-year period after 1840, when a popular party, led by James Fazy, not averse to the use of the barricades to secure their aims, forced the adoption of two major revisions in the canton's basic statute and thereby ushered in the modern radical democratic régime. For his materials, the author relies largely upon the debates of the canton's legislative and constitutional assemblies and the correspondence of leading public figures. These sources, however, reflect with reasonable fidelity and completeness the more crucial issues, diplomatic, economic, and political, which dominated cantonal opinion in the various periods under review. Although limited to the constitutional history of a single small canton, and consequently somewhat parochial in content, the study is not without value to the student of comparative politics. It provides an excellent reminder of the oft-neglected truth that the more successful democratic institutions of contemporary states have developed from vigorous local roots and were not imposed by national constituent assemblies. Moreover, the fact that Geneva, comparatively isolated from the diplomatic and military quarrels of the Continent by the neutrality of the Confederation to which it belongs, should have developed democratic institutions with such amazing rapidity supplies perhaps a more convincing demonstration of the contemporary appeal of such institutions than the history of those larger communities in which the logical course of constitutional development may have been deflected or corrupted by the exigencies of power politics. At any rate, Professor Rappard appears to rely, in part at least, upon the history of his own canton for the following significant generalizations which appear on the concluding pages of his excellent study: "l'histoire du monde occidental, depuis un siècle et demi, paraît montrer que la plupart des hommes, lorsque la paix extérieure et la tranquillité intérieure leur en laissent le libre choix, préfèrent la qualité de citoyen à la condition de sujet. Impatients de toute contrainte, ils en sont tout naturellement venus, par la liberté politique, à la démocratie."—ARNOLD J. ZURCHER.

Of the half-dozen worth-while books on Swedish social affairs which have appeared in this country during the past two years, *The Government*

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of Labor Relations in Sweden (Chapel Hill: The American-Scandinavian Foundation and the University of North Carolina Press, pp. xii, 367, $3.50), by James J. Robbins, is easily the most important to political scientists. It is a solid work, the result of mature research on the ground, and gives the reader an excellent account of the general labor problem in Sweden as well as the law of labor relations. While there is an adequate treatment of the Swedish collective contract system and a substantial portion of the book is concerned with the Labor Court and the major decisions of that unique tribunal, this is not the focus of Dean Robbins' interest. His stress is placed rather upon the singular way in which the Swedish labor market is governed by the joint functioning of public and private authorities. Regarded narrowly as a problem of industrial relations, the Swedish experience is noteworthy. "More important, however, is the fact that the implications of the Swedish evolution lead into some of the more basic questions concerning the nature of modern government." The governmental arrangements in the Swedish labor market as here described have considerable significance beyond the changing relationship between employers and employees in a now largely isolated but yet free corner of Europe. Both because of the collectivistic character of that relationship and because it has assumed that character within the framework of a constitutional parliamentary régime, Sweden's experience is one which should command our attention. Whether that experience "is the path of the future, or the last stage of a closing epoch of liberalism," the Swedish governmental processes open up new vistas for the student of politics. Sweden has demonstrated that functional associations can operate privately within the framework of a constitutional government, can assume governmental functions, and can at the same time preserve a high degree of autonomy. The author gives us a complete picture of this capitalist democracy where the principle of unionism prevails, not as a tolerated aberration, but as an integral element in the social organization of the state. His demonstration of how order and stability can be achieved without the imminent danger of totalitarian control is one which our public authorities as well as employers and labor leaders might profitably study. It is not the Swedish way to draw up elaborate blueprints of a future society. Yet the contribution of Sweden is real, though it must be ferreted out through a detailed examination such as Dr. Robbins has undertaken. The reviewer would indicate his agreement with a concluding observation: "While the Swedish contribution is not necessarily one which can be of immediate aid in the solution of the same problem in other lands, neither is it one which can well be ignored by foreign observers. Apprehension over the future of our own national labor policy could be met by a sober consideration of the more mature Swedish developments which point in the same general direction."—Eric Cyril Bellquist.

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Reciprocating interpretations of Canadians by Americans and Americans by Canadians are moving across the international boundary line in increasing volume. A. L. Burt's *Short History of Canada* (University of Minnesota Press, pp. 279, $3.00) is the most recent of these paper diplomatic envoys. It adds a bit more cultural context, a bit more historical background, and a bit more political interpretation to the relatively sketchy outlines of its contemporary predecessors. This is, however, still not the definitive history of Canada for Americans that needs to be written, though it unquestionably deserves a wide reading public. Obviously, it is not intended to be an academic source-book, but it will serve as useful a function in its lighter vein as the author's heavier textbooks have served in the classrooms of institutions of higher learning. The chapters dealing with French Canada are quite effective in illustrating the Dominion's peculiar cultural duality. Those dealing with Canada's relationship to the United States during the Revolution and the War of 1812 are more sympathetic to Canada than to us—a refreshing viewpoint for American readers, at least. The emphasis on the importance of the fur trade in Canada's history—even to date—is probably the most unique feature of the book. There is a nice piece of institutional comparison in the chapters on government. Indeed the facility in American-British-Canadian comparisons of all kinds is worthy of comment. The graphs, maps, cartoons, and other illustrations are useful.—FRANCES R. FUSSELL.

In the *European Section of Atlas of Parliamentary Government*, and the *Canadian Section of Atlas of Parliamentary Government*, separately published by the author, Everett Miller Claspy (Dowagiac, Michigan, 1939–40), teachers of comparative government will find much useful data for their lectures. In these two *Sections*, one finds election dates and results, parliamentary party statistics, names and terms of heads of states, premiers, and cabinets for more than thirty separate governmental systems, mainly European, brought down generally to 1939. Mr. Claspy avows the attempt "to outline the political history of the states of Europe and political units of the British Empire which enjoy, or have enjoyed in the past, some form of parliamentary government," but he makes no comments and has no interpretations to offer. Only the bare figures and names are there. Even these are not beyond question, because they are taken from *Current History* and *Events* magazines, the *Political Handbook of the World*, the *Statesman's Yearbook*, the *Annual Register*, and other secondary sources. Apparently, no official documents were consulted.—J. G. HEINBERG.

As of January 1, 1942, the Brazilian Administrative Department of Public Service has issued a second and much more compact and usable

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edition of the *Indicador da legislação e organização administrativa do executivo federal* (pp. 338). This is the first modern government manual issued by any of the Latin American countries. The main arrangement is alphabetical by ministry, preceded by the President of the Republic and the offices directly under his supervision and the Tribunal de Contas. Under these groups is given first the citations to the statutory and other authority for the existence of the various agencies and their subordinate agencies, and then a directory of the principal officials of the different entities. At the end are two indexes, one by agency and the other by person.—JAMES B. CHILDS.

INTERNATIONAL LAW AND RELATIONS

It is now especially pertinent to reappraise every aspect of the post-Versailles effort to develop an adequate international organization. So it is gratifying that we now have available Gerhard P. Pink's *The Conference of Ambassadors (Paris, 1920–1931)* (Geneva Research Centre, pp. 293, $.80 or 3.50 Swiss francs). This study, which was first presented for the diploma of the Graduate Institute of International Studies, is included in the *Geneva Studies*, Vol. XII, Nos. 4–5, for February, 1942, and carries a preface by Paul Mantoux, director of the Institute. The study is admittedly prepared from incomplete materials, since official archives containing minutes of the Conference were not available to the author. Dr. Pink outlines adequately the manner in which the Conference was set up, and develops the gradual extension of its competency until it "became a sort of European Directorate." The machinery is described by which the Principal Allied Powers, in particular, asserted their preponderance in the handling of certain problems left unsettled by the treaties of peace. These Powers took advantage of "the unclear nature of the powers [of the Conference] deliberately to make use of the Conference for tasks for which it was not created. . . . " They used either the League or the Conference, "the one or the other being employed as occasion suited, according as the solution could be reached more easily for the Great Powers and with the least responsibility on their part" (p. 277). As in the Corfu affair, the Conference provided a way of "escaping responsibility for delicate and doubtful decisions." Here was the old diplomacy in a new dress—one of the numerous steps on the road from the bilateral to the collective diplomacy—but with the familiar Big Power pressures and lack of exposure to the public eye. To the Conference were assigned important competencies concerning execution of the peace treaties, especially with respect to new boundaries and supervision of military control and other inter-Allied commissions. Geneva and Paris might lean on the other, although, on occasion, the Conference arrogated to itself functions falling well within the scope of the Covenant, thereby involving nice questions of jurisdiction

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and control. The book is somewhat awkwardly organized and includes a good deal of extraneous material. There is needless duplication, and one senses a certain over-stressing of the points made. None the less, the study is well documented and throws needed light on a neglected phase of the international political history of the 1920's.—IVAN M. STONE.

If the gloomy story of Hans L. Leonhardt's book, *Nazi Conquest of Danzig* (University of Chicago Press, pp. xiii, 363, $3.50), told nothing but the Free City's dismal fate during her last seven years, it would still make interesting and exciting reading despite its heavy load of source material. Danzig's lot, however, was inseparably connected with the destiny of European democracy and with the League of Nations, which guaranteed her constitution. "In Danzig, events in the Reich were repeated in slow motion" (p. 339). While it took the Nazis only a few months to crush all opposition in Germany, the Danzig opposition parties, representing 49.97 per cent of the electorate, held out against overwhelming odds for four and a half years. Their pathetic fight was watched by the friends of freedom all over Europe. Their hope, however, that the League would step in to uphold the constitution was frustrated again and again. Under the leadership of Mr. Anthony Eden, the Council of the League passed resolutions, expressed expectations, delayed action, and even connived at the ill-bred behavior of Herr Greiser, Danzig's president. One can understand Poland's desire not to antagonize the Reich, and M. Beck's "soft-pedal" policy in the Council. But, as the author puts it, "the League's impotence . . . was not wasted upon the German Chancellor, whose greatest capacity is a sense for the attractive possibilities of future disintegration" (p. 341). Mr. Eden, who in most cases was the Council's *rapporteur* on Danzig and, at one decisive session, its chairman, should have known this. Instead of strengthening conditions under which the opposition could have fought, he made room for the rule of violence. When questioned in the House of Commons about events of terror and suppression in Danzig, he gave evasive and misleading answers (p. 310). It is often said that the League failed because European democracy broke down. In the case of Danzig, so vividly described in Mr. Leonhardt's book, there is no doubt that the League contributed to the defeat of democracy. —HEINZ GURADZE.

Propaganda by Short Wave (Princeton University Press, pp. xi, 355), edited by Harwood L. Childs and John B. Whitton, summarizes the Princeton Listening Center's pioneering studies of foreign short-wave broadcasts. Systematic monitoring of the short-wave propaganda of the more important belligerent countries was commenced in November, 1939, and continued until June, 1941, when the importance of the work was

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recognized by the creation of an official agency—the Monitoring Service of the Federal Communications Commission. An introductory chapter by John B. Whitton traces the development of the use of radio as a technique in international politics and shows how the totalitarian states launched a "war of words" long before the League of Nations or the democracies were ready or willing to take even the first timid steps in that direction. Separate chapters by different investigators analyze the broadcasts of Germany, Britain, Italy, and France. "Atrocity Propaganda" is subjected to exhaustive analysis in a chapter by Philip E. Jacob, and Edrita Fried contributes an interesting study of "Techniques of Persuasion." The fact that no rigidly uniform pattern is followed by the various writers adds to, rather than detracts from, the effectiveness of the study, which achieves a synthesis often lacking in coöperative enterprises. It is comforting to learn from the final chapter of Harwood L. Childs that the European short-wave campaign has had little effect thus far upon the attitudes and opinions of the American people, and that one of our best defenses "is the excellence of our own informational services." He does not, however, minimize the importance of the "war for men's minds," but concludes that the United States and her allies must develop a "coördinated, convincing, and astute program of radio broadcasts" in enemy countries and throughout the world," and that "ideas, not words, are the stuff of which effective propaganda is made."—LOUISE OVERACKER.

Written with a standard vocabulary of 2,000 of the most frequently used words in the English language, Margery Perham's *Africans and British Rule* (Oxford University Press, pp. viii, 89) is addressed to African readers. Travel and residence in various parts of Africa, affiliation with African schools, and willingness to listen to the natives gave the author a variegated and fresh knowledge of African affairs. Steeped in the genuinely humanitarian tradition of British colonial thought, she puts concern for the native's welfare first. Her ideas on the means to this end are shaped by her attachment to the progressive elements in English politics. Thus, the author acknowledges and approves of the African's claim to speedy improvement of his social and economic lot and to eventual political independence. On this basis, the book patiently explains the prerequisites of such emancipatory development, the complex intricacies of the problems that present themselves, and the many difficult tasks that have to be mastered by rulers and ruled alike. Chapter 1 describes the slow and irregular growth of Britain's own government over the centuries. Chapter 2 assesses the African scene prior to European occupation. The next chapter records how British Africa was acquired and how it has been governed through successive ages. Then the uses and

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abuses of imperialism are taken up from the political and economic viewpoints. Finally, fundamental problems of the present and future are discussed in three chapters on "Indirect Rule and African Self-Government," "The Problems of White Colonization," and "Education and the Future." There are no startling revelations. The little book is neither discursive nor heavily overburdened with facts. But throughout it is instructive, fair-minded, and readable.—KLAUS E. KNORR.

Elizabeth R. Cameron's *Prologue to Appeasement; A Study in French Foreign Policy* (American Council on Public Affairs, pp. ix, 228, paper $3.00, cloth $3.50) is a scholarly account of France's relations with Germany from 1933 to 1936. A clear picture is given of the internal crises which so convulsed France that a strong foreign policy was impossible. Faced with internal dissension and economic depression, France tamely accepted German conscription in 1935. At her request, the League merely condemned Germany's action and warned of "appropriate measures" in the event of any *future* breach of peace and security in Europe. Vigorous French action was difficult because England, far from supporting a firm stand, sent Foreign Secretary Simon to Berlin to negotiate. Hitler was aided immensely in 1935 by friction between London and Paris. France was horrified by the Anglo-German naval agreement negotiated without her approval. While we may sympathize with England's desire to avoid a repetition of the disastrous pre-1914 naval rivalry, it is evident that Downing Street committed a major error. Coming only two months after the Stresa Conference, where a solid front against any future German aggression supposedly was established, London's action aroused deep resentment in Paris. On the other hand, Laval's notorious partiality for Italy during the Ethiopian crisis did much to irritate England at a time when German rearmament made Britain's support essential for France. Remilitarization of the Rhineland was accepted by Premier Sarraut because he hesitated, on the eve of the 1936 election, to do anything that might irritate the electorate. However, once again England was not inclined to support France in vigorous action. The *Times* calmly remarked that demilitarization of the Rhineland "was not destined to endure forever," and Lloyd George told Commons that Germany's denunciation of Locarno was no more serious than France's refusal to disarm. Mrs. Cameron vividly portrays how disunity within France and lack of coöperation between London and Paris facilitated the growth of German rearmament.—ROBERT S. MCCORDOCK.

The latest volume in the excellent series of "Yale Historical Publications" is Dr. Stetson Conn's *Gibraltar in British Diplomacy in the Eighteenth Century* (Yale University Press, pp. 317, $3.00). One of the aspects

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of British policy in the eighteenth century that has always seemed highly anomalous was the British government's lack of interest in its new possession of Gibraltar, occupied in 1704 during the War of the Spanish Succession. The acquisition of the Rock had in fact been largely a fortuitous affair, and its retention throughout the following decades was likewise something on which British statesmen put no great store. Upon several occasions, London came close to surrendering Gibraltar for other possessions or political advantages which seemed at the time much more important. The story of the complicated and desultory negotiations carried on during the eighteenth century over the disposition of Gibraltar has been skilfully unraveled and admirably described by Dr. Conn in this well written and readable monograph. So careful has been the author's scholarship that there will certainly be no need to cover this ground again. In addition to adequate footnotes in his text, Dr. Conn has placed at the conclusion of his study what he calls a bibliographical note, in which he gives reasoned and critical comments on his principal sources. There is also a well prepared index and a folded map tipped in at the back cover. Readers will appreciate the sixteen-page summary with which the author closes his study—a practice which other monograph writers would do well to follow.—Robert Gale Woolbert.

In a world of fantastically rapid changes of situation and opinion, the conscientious social scientist may well wonder at times whether he has not missed some significant concept or interpretation of events. One trustworthy check he can impose upon himself is to attend such a gathering as the Seventh Conference of Teachers of International Law and Related Subjects, held at Washington, D. C., April 23–25, 1941, or at least read its *Proceedings*, published by the Carnegie Endowment for International Peace (Washington, pp. xiv, 210, $1.00). Here is information, corrective, and stimulus for teacher, practitioner, and researcher. The papers, discussions, and reports deal not only with the teaching of international law and related topics generally, and in small colleges particularly, but also with vocational opportunities in the field of international law, publication of government documentary materials, research progress and procedure, and the substantive development of the law. At every turn, the discussion relates each topic to the changing international scene. Twenty pages of skillful indexing contribute to the reference value of the *Proceedings*. The eighteen months of widening catastrophe that have elapsed since this Conference was held have underscored and enhanced, not diminished, the importance of what was then said. Both insight and prescience illumined the discussions.—Henry Reiff.

Social security, complete and implemented, might be the answer to end

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the question of war. At least that is the burden of *Approaches to Social Security* (International Labor Office, pp. 100, $0.50). The Atlantic Charter, document of intangibles, in the most objective of its eight points, declared for the collaboration of all nations to secure "improved labor standards, economic advancement, and social security." This little essay attempts to cast the shadow of such security over the shape of things to come. It is concerned with the third of the Four Freedoms, freedom from want. It surveys the ancient landmarks—Charlemagne's declaration (a thousand years ago) of the responsibility of each parish for poor relief; Vives' case work (four centuries ago); the English Poor Law of 1601, with compulsory taxation for financial parish assistance—and finally arrives at the more recent milestones in New Zealand, Germany, Sweden, Denmark, Australia, and Canada, and the most recent in Uruguay, Ireland, Argentina, and even Peru, Ecuador, and Rumania. The path is three-fold—social assistance, social insurance, social security. There is no documentation; the I.L.O. is sufficient guarantee of authenticity. The English is at times verbose; after all, English means the simplification of Latinity.—KEITH CLARK.

The Background of Our War (Farrar and Rinehart, Inc., pp. 279, college edition $1.50) is presented by the War Department Bureau of Public Relations, the text being based on lectures prepared for the orientation course given as a part of the soldier's basic military training. It is almost exclusively a factual account of the military developments of the present war. Eight chapters trace the events in Europe since the invasion of Poland, two deal with the struggle in the Far East since 1931, and individual chapters deal with Latin America, national defense in the United States, and America at war. There are some (usually weak) attempts at explanation, and there is a slight appeal, particularly in the concluding chapter, to patriotic emotion; some glossing is evident, as in the treatment of the results of the attack on Pearl Harbor. The biggest defect of the book however, is the absence of an adequate treatment of the issues involved in the war and the reasons for American participation. The book is recommended for a summary treatment of military developments. Numerous maps and an up-to-date list of "suggested readings" add to its value.—VERNON VAN DYKE.

Sea Power in the Pacific, 1936–1941 (Princeton University Press, pp. xiii, 80) is a selected bibliography of books, periodical articles, and maps, prepared by Werner B. Ellinger and Herbert Rosinski, and covering the period from the London Naval Conference to the beginning of the war in the Pacific. The list was virtually completed, at the Institute for Advanced Study at Princeton, before Pearl Harbor, but has acquired en-

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hanced timeliness and utility since that event. "In the process of selection, emphasis was laid on factual information rather than political controversy, on naval strategy rather than political and economic problems, and on materials having particular relevance to the present war." Where sufficient reason appeared, however, these criteria have not been adhered to rigidly; nor have the time limits of the period covered. Within the scope of the plan, the bibliography—containing six hundred titles, and accompanied by an authors' index—leaves little to be desired.—F. A. O.

POLITICAL THEORY AND MISCELLANEOUS

Glimpses of World History (John Day Co., pp. xvi, 993, $4.00) is a child's history of the world, written by Pandit Jawaharlal Nehru between 1930 and 1933 in the form of a series of letters to his small daughter. During this period, he was serving a prison sentence for his part in the civil disobedience movement launched by the Indian National Congress party. The letters cover the political and economic history of the world from about 3000 B.C. to 1933, and a final letter brings the story down to 1938. The interest of the book does not lie in its ostensible subject, but in the occasional remarks which reveal the writer's attitude toward Great Britain and the other powers. His interpretation of history is strictly Marxist, and Soviet Russia is singled out as the criterion of all that national policy should strive for. The other states of Europe are in the death throes of a dying capitalist and imperialist system. The United States is richer, but otherwise not much better: she has been too crafty to make outright annexations and has acquired an "invisible empire" which is equally effective and excites less opposition. All the Americans "are interested in is profit, and so they take steps to control the wealth of the country. Through the control of the wealth, it is easy enough to control the people of the country, and, indeed, the land itself." Great Britain is merely the worst of a bad lot. She is a dying state, feeble, pro-fascist, and anti-democratic. During the whole of her 170 years of rule in India, she has never performed a single action that would benefit the Indian peoples. Economically, her régime has been one of consistent exploitation, and princes and landlords have been created or bolstered up so that she would have allies in her oppression. Hindu-Moslem hostility was created for the same end. Some really striking liberties are taken with the facts of history in order to support these conclusions. The embittered hostility and distrust shown by the letters shed a revealing light on the reasons why Pandit Nehru opposed Sir Stafford Cripps' offer. They are also enlightening as regards the reason for his suspicion of American offers of help in expanding India's war industries.—Lennox A. Mills.

Reginald Lennard's *Democracy; The Threatened Foundations* (Cambridge University Press, Macmillan Co., pp. x, 121, $1.25) is one of the

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short books in the series edited by Ernest Barker on "Current Problems." It is apparently meant for the general reader, but the scholar will find it an unusually penetrating statement of familiar ideas. Two historical chapters give a clear and scholarly summary of the roots and growth of British democracy. The writer is well aware that democracy in England is still unfinished business, but he demonstrates that it is a business well under way. The cause of democracy, he says, is closely bound up with democratic education and social reform; and he examines the nature of the former and the progress of the latter. "War is repugnant to democracy," but so is that peace which is poisoned by fear and suspicion. "You cannot debate in gas masks." In his short suggestive section on democracy and war, Mr. Lennard refuses to pass judgment on the British postponement of war, on the ground that the information does not yet justify a judgment. He concludes with a criticism of British followers of German organic theory—those who are in "the porticos of Moloch's temple"—and a warning to impatient young reformers that they should study the development of British democracy before yielding to the lure of totalitarian short-cut methods.—JOHN D. LEWIS.

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